RESOLUTION TO AUTHORIZE THE CITY MANAGER TO APPLY FOR DISASTER ASSISTANCE FUNDS FROM STATE OES WHEN APPROPRIATE UNDER STATE DISASTER ASSISTANCE REGULATIONS

Agenda Item # 1

Prepared By:

Bob Kelley, OESC

Approved By:

Gerald T Galvin
Chief of Police

Submitted By: J. Edward Tewes City Manager

City Manager

RECOMMENDED ACTION(S):

Adopt resolution authorizing the City Manager to apply for disaster assistance funds from the State Office of Emergency Service when appropriate under State disaster assistance regulations in the event of future disasters affecting the City of Morgan Hill.

EXECUTIVE SUMMARY:

- 1. The Governor's Office of Emergency Services (State OES) has requested each City and County to submit a current Resolution of the City Council authorizing designated staff member(s) to submit necessary forms for Public Assistance for future disasters.
- 2. This designation is by title, and must be accompanied by an administrative letter which names the present incumbent, and which must be amended as changes occur in the named position(s).
- 3. City Council policy authorizes only the City Manager to apply for funds from sources outside the City Government.

FISCAL IMPACT: None at this time. The impact could be significant if future disasters impact the City.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE CITY MANAGER TO EXECUTE FOR, AND ON BEHALF OF, THE CITY OF MORGAN HILL, A PUBLIC ENTITY ESTABLISHED UNDER THE LAWS OF THE STATE OF CALIFORNIA, AN APPLICATION FOR CERTAIN FEDERAL FINANCIAL ASSISTANCE UNDER P.L. 93-288, AS AMENDED BY THE ROBERT T. STAFFORD DISASTER ASSISTANCE RELIEF AND EMERGENCY ASSISTANCE ACT OF 1988, AND/OR STATE FINANCIAL ASSISTANCE UNDER THE CALIFORNIA DISASTER ASSISTANCE ACT.

WHEREAS the City Council of the City of Morgan Hill, a public entity established under the laws of the State of California, is required to designate an authorized agent to apply for and file with the State Office of Emergency Services (OES) applications for certain federal financial assistance under P.L .93-288, as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and /or state financial assistance under the California Disaster Assistance Act; and,

WHEREAS it is the policy of the City Council of the City of Morgan Hill that only the City Manager may apply for funds from sources outside the City of Morgan Hill government; and

WHEREAS the City of Morgan Hill, a public entity established under the laws of the State of California, hereby authorizes its agent(s) to provide to the State Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.

NOW THEREFORE, based on the evidence presented to the City Council, including a written staff report and oral testimony in this matter, and any other material presented for its consideration, the City Council does hereby find, determine, resolve and order as follows:

1. The City Manager is designated as the applicant's (City of Morgan Hill) authorized agent.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 15th Day of October, 2003, by the following vote.

AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS: ABSTAIN: COUNCIL MEMBERS: COUNCIL MEMBERS:

***** CERTIFICATION *****

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No., adopted by the City Council at a Regular Meeting held on October 15, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

| DATE: | |
|-------------|-------------------------|
| | IRMA TORREZ, City Clerk |



MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF
MORGAN HILL AND SANTA CLARA COUNTY FOR CERTAIN
PROGRAM FUNDS FOR EMERGENCY PREPAREDNESS

Agenda Item # 2

Prepared By: Bob Kelley, OES

(Title)

Approved By:

Gerald T Galvin
Chief of Police
(Department Director)

Submitted By:

City Manager

RECOMMENDED ACTION(S):

1. Authorize the City Manager to Execute a Memorandum of Understanding Between the City of Morgan Hill and the County of Santa Clara for the Administration of Certain Pass-Through Funds for Emergency Preparedness

EXECUTIVE SUMMARY:

- 1. The City of Morgan Hill has been allocated certain pass-through funds for various emergency preparedness actions as its share of the Federal/State appropriations:
 - a. FY-2002 Supplemental Appropriations Grant for Citizen's Corps & CERT-\$207.73
 - b. FY-2002 Supplemental Appropriations Grant for Emergency Operations Planning-\$4,924.64 to update Emergency Plans.
 - c. FY-2002 State Domestic Preparedness Grant Program—(equipment) \$6,451.92.
 - d. FY-2003 Emergency Management Performance Grant—OES salaries & ops-\$2,918.04

Total Grant Monies: \$14,502.33

- 2. Santa Clara County is the Fiscal Agent for the Santa Clara Operational Area which receives these various grant monies from State Agencies which have been allocated these funds by the Federal Department of Homeland Security (DHS).
- 3. Payment of these monies will occur within 60 days after the Santa Clara County receives same from the appropriate State Agencies.
- 4. These are one-time appropriations but follow-on allocations are expected in later Fiscal Years in amounts as yet to be announced.
- 5. The Police Department, through the Office of Emergency Services, will administer these funds once received

FISCAL IMPACT:

1. The City of Morgan Hill will receive monies, equipment and services which were not In the City Budget but which are needed for an improved state of emergency preparedness.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 15, 2003

AQUATICS CENTER PROJECT – SEPTEMBER CONSTRUCTION PROGRESS REPORT

RECOMMENDED ACTION(S): *Information Only*

EXECUTIVE SUMMARY:

Previous Council action awarded the contract for construction of the Aquatics Center Project to Gonsalves & Stronck Construction Company, Inc. At that time, staff informed Council that we would report monthly on the progress of the construction. Attached is the progress report for the month of September. This

Agenda Item #3 Prepared By: **Project Manager** Approved By: **Public Works Director Submitted By:** City Manager

report has been sent to our webmaster for posting on the City's website. Currently, the project is approximately a week and a half behind schedule due to some minor subcontractor issues. Gonsalves and Stronck has committed to resequencing some activities and working additional hours including Saturdays in order to recover for a May, 2004 completion. The project is currently within budget.

FISCAL IMPACT: None



REPLACEMENT PURCHASE OF POLICE VEHICLE

RECOMMENDED ACTION(S):

1. Authorize vehicle purchase through the State of California General Services Procurement process for the vehicle identified in this report for a total cost of \$31,668.00.

Prepared By:

Terrie Booten Lieutenant

Approved By:

Gerald T. Galvin
Department Director

Submitted By:

City Manager

EXECUTIVE SUMMARY:

The Police Department is requesting the replacement of one vehicle in the 2003/2004 budget year. The vehicle being replaced was involved in a collision while performing police duties on September 27, 2003. A drunk driver struck the stopped police vehicle on Monterey Rd. while the officer was assisting in the tow of a vehicle. Our vehicle is beyond repair. The total cost for the vehicle replacement is \$31,668.00. The amount includes equipment replacement, vehicle build out, tax, freight and the administrative fee of 1.93% for the use of State Contract #1-03-23-14-01.

The City has used the State purchasing process in the past to purchase vehicles in accordance with Sec. 3.04.180 of City Code. The price through the State contract is excellent based upon the very competitive bidding for the State contract. Using the State purchasing system, we are able to locate a police package vehicle available for purchase through Downtown Ford Sales in Sacramento, who has overstocked 2004 State procurement vehicles. The replacement vehicle is guaranteed to be delivered within 10 days after receipt of the order.

The Department is aware of budget constraints and has evaluated the needs in regard to the replacement of this vehicle. Staff recommends authorization based upon the need to provide a safe and efficient level of service required in the community.

FISCAL IMPACT:

The cost of this vehicle is funded in the Vehicle Replacement Fund. Additionally, we have filed a claim against the responsible party for restitution of the cost of the vehicle and equipment.

2002-2003 REPLACEMENT

PUBLIC WORKS DEPARTMENT

| VEHICLE | REPLACE WITH: | COMMENTS/STATUS | COST | FUNDING/DIVISION |
|-------------------------------|--|---|-----------------|-------------------------|
| W96167 | W98122 | W96167 will be surplused. | | |
| 1996 Ford Ranger | 1998 Chevrolet 2500 | W96167 has approximately 92,000 miles and is in fair condition. However, it has high mileage and is too small for hauling heavy water valves and other apparatus. W98122 will provide a more reliable and usable vehicle. | | |
| W98122 1998 Chevrolet 2500 | NEW 2003 GMC Sierra Pickup Regular Cab, 4x2, 8600 GVW, 8' Bed State Stock #2320-009-0403-1 Item #11, Group V | W98122 truck has approximately 65,000 miles. This vehicle is required for 24-emergency response. Because of the mileage it would be better used as a replacement W96167 and to purchase a new vehicle for emergency response. It is still in good condition and we would be able to get more years out of it. | Total: \$17,566 | 790-43830-8500 Water |

| S90140 | W92157 | S90140 will be surplused. | | 640-5900 |
|--|--|---|--|----------------|
| 1990 Ford 4x4 ³ / ₄ Ton Truck | 1992 Ford 1 Ton Dump Truck | S90140 has approximately 41,000 miles. It has been used to haul a portable generator. This truck has had continuous problems with the front end. It is not considered safe and is used only when necessary. W92157 will be modified to allow a generator to be put on it. W92157 has dual wheels giving it more stability to haul the portable generator. | | Sewer |
| W92157 | NEW | W92157 will be transferred to the Sewer Department. | Total: \$31,702 (Includes estimated | 790-43830-8500 |
| 1992 Ford 1 Ton Dump Truck | 2003 Ford F450 Truck Cab & Chassis (HD), Regular Cab, 4x2, 14500 GVW, 135"WB (DRW) State Stock #2320-000-0027-0 Item #43, Group II | As a dump truck this truck is undersized for dumping asphalt and base rock. It is sufficient size to replace S90140 and to be modified in order to carry the generator. Purchasing a heavy duty truck will allow safe dumping of asphalt and base rock. | cost for Dump Body of \$9,400) | Water |

| VEHICLE | REPLACE WITH: | COMMENTS/STATUS | COST | FUNDING/DIVISION |
|--------------------------------------|---|--|--|-------------------------|
| W90144 1990 Ford 1 Ton Utility Truck | NEW 2003 Chevrolet 3500 Truck Cab & Chassis Regular Cab, 4x2, 10000 GVW, 135" WB (DRW) State Stock #2320-009-0460-2 Item #38, Group I | W90144 will be surplused. This truck has 60,731 miles. It is in fair condition but lacks the stability needed to utilize a hoist. The service body will be built to accommodate an existing hoist. Utilizing a hoist on this truck allows for safer loading and unloading of equipment thereby reducing the potential of worker injury. | Total: \$27,756 (Includes estimated cost for Service Body of \$9,500) | 790-43830-8500 Water |

POLICE DEPARTMENT

| VEHICLE | REPLACE WITH: | COMMENTS/STATUS | COST | FUNDING/DIVISION |
|------------------------|--|--|---|---|
| C87147 1987 GMC Van | NEW 2003 Ford F250 Cab & Chassis Regular Cab, 2WD State Stock #2320-000-0006-3 Item #15, Group V | C87147 will be surplused. This vehicle has 239,000 miles. It has major engine transmission problems. The body is not water tight. It is not safe on hillside areas. | Total: \$34,100 (Includes body and police safety items) | 790-43830-8500 (Police) \$10,686 General Fund \$23,414 |

2002-2003 SURPLUS VEHICLES/EQUIPMENT

PUBLIC WORKS DEPARTMENT

 W96167
 1996 Ford Ranger

 S90140
 1990 Ford 4x4 ¾ Ton Truck

 W90144
 1990 Ford 1 Ton Utility Truck

 R97334
 1997 Toro Z325 w/48" deck Model

 D75310
 1975 Miller Welder

POLICE DEPARTMENT

C87147 1987 GMC Van

RECREATION DEPARTMENT

B87130 1987 Mercury Topaz



APPOINTMENT OF SUBCOMMITTEE FOR ETHICS WORKSHOP

RECOMMENDED ACTION(S):

Appoint Two Council Members to Work with City Attorney on Agenda and Substance of Ethics Workshop to be Held on November 11th.

Agenda Item # 5

Prepared By:

Helene Leichter City Attorney

Submitted By:

J. Edward Tewes
City Manager

EXECUTIVE SUMMARY:

The City Council has scheduled a workshop on November 11, 2003, from 5:00 to 7:00 p.m. to discuss ethics and other topics. The City Attorney, in coordination with the City Clerk's office, is preparing the agenda and presentations. In order to ensure that the workshop is focused on issues of concern to the Council, the City Attorney is requesting that the Council appoint a subcommittee to work with the City Attorney on developing an agenda and presentations for the workshop.

FISCAL IMPACT:

No budget adjustment required.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 15, 2003

Agenda Item # 6 Prepared By: Dep Dir Public Works Approved By: Public Works Director Submitted By: City Manager

AWARD OF CONTRACT PARADISE PARK IMPROVEMENT PROJECT

RECOMMENDED ACTION:

- 1. Award contract to Sanchez Grading General Contractor in the amount of \$163,974 for construction of Paradise Park Improvements.
- 2. Authorize a \$12,000 construction contingency.

EXECUTIVE SUMMARY: Pursuant to the Public Contract Code, staff has received bids from two contractors for performing work to replace play equipment, repair the pedestrian walkway encircling the park, and provide access improvements for the mobility impaired. The bid opening was conducted on Tuesday September 16, 2003. The bids received are listed below:

| | Base Bid | Add Alternate A | Add Alternate B | <u>Total</u> |
|---------------------|-----------|-----------------|-----------------|--------------|
| Sanchez Grading | \$163,974 | \$3,428 | \$3,545 | \$170,947 |
| Lone Star Landscape | 210,838 | 5,000 | 4,000 | 219,839 |

The low bid both for the base bid and with Add Alternates A and B was submitted by Sanchez Grading.

The total funding available for the project is \$165,000 including a construction contingency. This is not sufficient funding for awarding the contract per the present scope of work. Staff recommends proceeding with this project by not performing Add Alternates A & B and by executing a deductive change order eliminating contract line items 10 (Play Equipment) and 11 (Wood Fibar Surfacing) for a total cost deduction of \$45,825 from the base bid cost. This will reduce the cost of the work remaining to \$118,149. The removal and installation of the play equipment will be re-bid in the spring of 2004. Bidding this work separately should reduce the cost by eliminating the General Contractor's overhead and profit. Sanchez Grading's bid prices for the remaining items of work are very competitive. Staff checked references for Sanchez Grading and found them to be favorable. Sanchez Grading has agreed by letter to proceed with performing work on this project by eliminating bid items 10 and 11 as described above.

FISCAL IMPACT: This project is funded with State Department of Recreation Proposition 12 Per Capita Funding as part of the 2001-02 Capital Improvement Program (CIP) Budget, Project # 118001. Sufficient Proposition 12 funding is available to fund the \$118,149 including a \$12,000 contingency.



APPROVAL OF SUBDIVISION IMPROVEMENT AGREEMENT WITH MORGAN HILL LAND, L.L.C. – CONDIT ROAD APN 728-17-019

| Agenda Item # 7 |
|-----------------------|
| Prepared By: |
| Senior Civil Engineer |
| Approved By: |
| Public Works Director |
| Submitted By: |
| City Manager |

RECOMMENDED ACTION: Approve the attached Subdivision Improvement Agreement and authorize the City Manager to sign the agreement on behalf of the City with Morgan Hill Land, L.L.C., Condit Road (APN 728-17-019)

EXECUTIVE SUMMARY: This is a 2 lot commercial subdivision located on the west side of Condit Road between East Dunne Avenue and Diana Avenue. (See attached location map.) The developer has filed a Subdivision Map and supporting documents for the subdivision known as Condit Road – The Ford Store. The Tentative Subdivision Map was approved on July 2, 2003 by the City's Development Review Committee. A condition of approval of the Parcel Map was that certain improvements be installed by the developer as shown on the approved Subdivision Improvement Plans for assessor's parcel number 728-17-019.

The developer has furnished the City with the necessary documents to complete the processing of the Parcel Map and has made provisions with the City to provide the necessary security guaranteeing the completion of public improvements prior to recordation of the Parcel Map. Staff recommends that City Council approve the attached Subdivision Improvement Agreement and authorize the City Manager to sign on behalf of the City.

FISCAL IMPACT:

Development review for this project is paid for from development processing fees.



CITY COUNCIL STAFF REPORT MEETING DATE: OCTOBER 15, 2003

ACCEPTENCE OF BUTTERFIELD BOULEVARD SEWER TRUNK PROJECT

RECOMMENDED ACTION(S):

- 1. Accept as complete the Butterfield Boulevard Sewer Trunk Project in the final amount of \$320,210.23.
- 2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

| Agenda Item # 8 |
|-----------------------|
| Prepared By: |
| |
| Associate Engineer |
| Approved By: |
| Public Works Director |
| Submitted By: |
| |

City Manager

EXECUTIVE SUMMARY:

The contract for the Butterfield Boulevard Sewer Trunk Project was awarded to California Trenchless, Inc., by the City Council at their April 16, 2003 meeting in the amount of \$321,082, including a ten percent contingency of \$29,200. The scope of the work included the installation of approximately 3,100 linear feet of 24" sewer pipe along Butterfield Boulevard, between San Pedro Avenue and Main Avenue. During construction, one change order totaling \$24,809 was approved for unforeseen conditions and an additional \$3,520 was approved for varying bid quantities. The final construction cost totaled \$320,210.23.

The work has been completed in accordance with the plans and specifications.

FISCAL IMPACT:

The entire project was budgeted with Sewer Impact Fee Funds (641) totaling \$530,000 under CIP Project #314002. The total project cost including design was \$396,000. The remaining balance to be returned to the 641 fund is approximately \$134,000.

Record at the request of and when recorded mail to:

CITY OF MORGAN HILL CITY CLERK 17555 Peak Avenue Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION CITY OF MORGAN HILL

BUTTERFIELD BOULEVARD SEWER TRUNK PROJECT

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 12th day of May, 2003, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to California Trenchless, Inc., on April 16, 2003, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on June 18, 2003, accepted by the City Council on October 15, 2003, and that the name of the surety on the contractor's bond for labor and materials on said project is the International Fidelity Insurance Company.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

| Name and address of Owner: | City of Morgan Hill 17555 Peak Avenue Morgan Hill, California |
|----------------------------|---|
| Dated:, | 2003. |
| I certify under | Jim Ashcraft, Director of Public Works penalty of perjury that the foregoing is true and correct. |
| | Irma Torrez, City Clerk City of Morgan Hill, CA |

Date:



CITY COUNCIL STAFF REPORT MEETING DATE: OCTOBER 15, 2003

ACCEPTANCE OF FY 01/02 TRAFFIC SIGNALIZATION PROJECT

RECOMMENDED ACTION(S):

- 1. Accept as complete the 01/02 Traffic Signalization Project in the final amount of \$496,494.75.
- 2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

| Pr | epared By: |
|----|----------------------|
| Se | nior Engineer |
| Aŗ | oproved By: |
| Pu | ablic Works Director |
| Su | bmitted By: |

City Manager

EXECUTIVE SUMMARY:

The contract for the Traffic Signalization Project was awarded to GAB Construction, by the City Council at their June 26, 2002 meeting in the amount of \$456,000. The project included the installation of new traffic signals at the intersections of Hill Road/East Dunne Avenue and Butterfield Boulevard/Diana Avenue. The traffic signal at the intersection of Condit Road and East Dunne Avenue was also upgraded with this project. Unforeseen conditions were encountered during the course of construction which increased the original contract price by \$40,494.75. The final project construction cost was \$496,494.75.

The work has been completed in accordance with the plans and specifications.

FISCAL IMPACT:

This project was budgeted in the 2001-02 Capital Improvements Program budget under project number 502093. The allocated project construction cost including a 10% contingency was \$501,600. The contract was awarded in the amount of \$456,000 and the final contract price is \$496,494.75.

Record at the request of and when recorded mail to:

CITY OF MORGAN HILL CITY CLERK 17555 Peak Avenue Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION CITY OF MORGAN HILL TRAFFIC SIGNALIZATION PROJECT

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 31st day of July, 2003, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to GAB Construction, Inc., on June 26, 2002, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on August 14, 2003, accepted by the City Council on October 15, 2003, and that the name of the surety on the contractor's bond for labor and materials on said project is the Travelers Casualty & Surety Company of America.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

| Name and addi | ress of Owner: City of Morg 17555 Peak Morgan Hill | Avenue |
|---------------|--|--|
| Dated: | , 2003. | |
| | I certify under penalty of per | Jim Ashcraft, Director of Public Works |
| | | z, City Clerk gan Hill, CA |



| Agenda | Item # | 10 |
|--------|--------|----|
| | | |

Prepared By:

Council Services & Records Manager/ City Clerk

Submitted By:

City Manager

UPDATE OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P)

RECOMMENDED ACTION(S): Continue the discussion of the proposed amendments to the draft initiative to November 5, 2003.

EXECUTIVE SUMMARY:

The City Council was introduced to the draft initiative for the Residential Development Control System at its October 1, 2003 meeting. The City Council provided staff with initial comments. The City Attorney informed the City Council that staff had edits to make to the draft initiative that it believes were grammatical and not substantive in nature. Staff is requesting that the Council continue further discussions on the draft initiative to November 5, 2003 in order to allow staff and outside counsel the opportunity to complete the edits. Staff will have the appropriate resolutions and documents available at the November 5 meeting for Council consideration, including requesting the services of the Santa Clara County Board of Supervisors and Registrar of Voters to consolidate the City's ballot measure with the special March 2, 2004 election.

FISCAL IMPACT: \$65,000 has been budgeted for this project. No budget adjustment is required.



| Agenda Item <u># 11</u> |
|-------------------------|
| Prepared By: |
| Asst. to the City Mgr. |
| Submitted By: |

City Manager

STATUS OF GOALS ADOPTED BY THE CITY COUNCIL ON FEBRUARY 26, 2003

RECOMMENDED ACTION

1. Accept report on the status of goals adopted by the City Council on February 26, 2003.

2. Direct staff to report back on implementation status in January 2004.

EXECUTIVE SUMMARY:

The City Council adopted the attached 29 goals on February 26, 2003 to guide their work for 2003. This report is the first update of the status of these goals; in the future, such updates will be presented quarterly. At this time, 15 of the 29 goals have been completed and 14 are in progress.

Of the goals that are not yet complete, initial work has been completed on each of them. <u>Seven more goals are expected to be complete in 2003</u>, including

- Reviewing the Council's Medical Services Objectives
- Considering City staff evaluation of interim flood control measures and financing plan
- Conducting an Urban Limit Line study
- Supporting the efforts of the Morgan Hill Community Foundation to establish programs for the arts
- Conducting a workshop on service level standards

Three goals are expected to be completed in 2004, including

- Consideration of revenue enhancement options
- Placing a ballot measure to extend Measure P on the March 2004 ballot
- Adoption of the Downtown Master Plan
- Allocation of RDA funds for downtown projects
- Schedule a workshop to review priorities, location, and funding for municipal buildings

Four goals may be considered on-going goals at this time, and completion dates have not been established. These include

- Pursuing the adopted Medical Services Objectives through the work of the Morgan Hill Community Heath Foundation
- Aggressive pursuit of full funding for the PL 566 project
- Continue to monitor opportunities for a future community-wide visioning process
- Continue to monitor opportunities for submitting a future application to the All America Cities competition

FISCAL IMPACT:

No budget adjustment required at this time.

2003 CITY COUNCIL GOALS – ADOPTED FEBRUARY 26, 2003 Status as of September 30, 2003

1. Goals for Budget and Fiscal Policy

| Goal | Status as of 9/30/03 | Comments |
|---|----------------------|--|
| a. Conduct a workshop on February 5, 2003 and establish a budget policy to guide the preparation of the FY 04 Budget. | Complete. | Council held three workshops and provided guidelines for preparation of the FY 2003/04 budget and five-year financial strategy. |
| b. Legislative Committee to review State Budget proposals and recommend a legislative strategy. | Complete. | The Legislative Committee followed the development of the State's budget, directed staff to send strategic communications, and continues to monitor the State's fiscal situation as it unfolds. |
| c. Finance Committee to review other cities' reserve policies and report to the Council. | Complete. | The Council confirmed its reserves policy with an amendment to pay for the first year's Aquatics Center start up costs (about \$200,000) out of the previously designated reserves. |
| d. Finance Committee to review revenue enhancement options for Council consideration. | In progress. | A public opinion survey included questions on revenue enhancement options. Staff reviewed a list of potential new revenue sources with the Finance and Audit Committee and with the City Council. No action was taken. |
| | | Staff will discuss new sources of revenue with the Finance Committee and, if recommended, with the Council prior to returning to the Council with a financial plan in January 2004. |

2. Goals for Redevelopment

| Goal | Status as of 9/30/03 | Comments |
|---|----------------------|--|
| a. By February 2003, conduct a workshop to review the existing allocation of \$147 million and create a dynamic process to prioritize projects. | Complete. | Council conducted the RDA allocation workshop and established revised allocations. |
| b. By May 2003, | Complete. | Council adopted PRC recommendations. |

| Goal | Status as of 9/30/03 | Comments |
|--|----------------------|---|
| consider PRC recommendations for allocations among recreation facilities, determine final allocations, and adopt a policy for making | | Council will re-review these recommendations in November, following Library Grant decision. |
| changes to priorities. | | |

3. Goals for Medical Services

| Goal | Status as of 9/30/03 | Comments |
|--|-----------------------------|---|
| a. Pursue the adopted Medical Services Objectives through the work of the Morgan Hill Community Health Foundation. | In progress. | Councilmembers have continued to serve on the Community Health Foundation Board. The Medical Services Foundation conducted a fundraiser, and will receive the remaining \$70,000 set aside to assist |
| | | in the implementation of the Medical Services Objectives. |
| | | Representatives of the Foundation also serve on the County Advisory Committee that is working with O'Connor Hospital to restore medical services to the former St. Louise campus. |
| b. By May 2003, review the Medical Services Objectives for possible updating. | In progress. | The Community Health Foundation has not yet provided the requested review of the Council's Medical Services Objectives. |
| | | On 9/24/03 Joanne Allen of O'Connor Hospital reported on the status of medical services at the former St. Louise facility. |
| | | The Council will have a workshop to review the objectives and the strategy on 11/5/03. |

4. Public Safety

| Goal | Status as of 9/30/03 | Comments |
|---------------------------|-----------------------------|------------------------------------|
| a. By June 2003, consider | Complete. | City Manager presented a report on |

| Goal | | Comments |
|----------------------------|-----------|---|
| | 9/30/03 | |
| a strategy for providing | | 9/24/03; Council directed City Manager to |
| fire services beyond the | | negotiate new contract with County Fire. |
| termination of the current | | |
| fires services contract | | |
| with Santa Clara County. | | |
| b. Adopt a Crime Control | Complete. | The Council had a crime control |
| Strategy following a | | workshop on 9/24/03. |
| workshop in the summer. | | |

5. Goals for Residential Growth Control

| Goal | Status as of | Comments |
|---------------------------|--------------|--|
| | 9/30/03 | |
| a. Continue Residential | In progress. | The task force has completed its review, |
| Growth Control through | | and the draft measure is being prepared by |
| 2020 by placing a | | outside counsel. The City Council has |
| measure before the voters | | agreed to delay presentation of the |
| in November 2003. | | measure to the voters until March 2004. |

6. Goals for Flood Control

| Goal | Status as of | Comments |
|--|--------------|---|
| | 9/30/03 | |
| a. Aggressively pursue full funding of the PL 566 project. | In progress. | Mayor Kennedy has met with and written to a Congressional delegation urging full funding of PL 566 and he has attended periodic strategy meetings with elected officials and senior staff of the Santa Clara Valley Water District. |
| b. Consider City staff evaluation of interim flood control measures and financing plan. | In progress. | By November 30, 2003, staff will report to Council regarding the status of federal funding for PL 566. Staff may request City funds to keep environmental and design documents moving to completion. |
| | | City partnership with a developer building a small residential project at the Dunne/Hill intersection may help alleviate flooding in that area. |

7. Goals for Preserving Open Space

| Goal | Status as of 9/30/03 | Comments |
|----------------------|----------------------|---|
| a. Conduct an Urban | In progress. | The study is underway and it is scheduled |
| Limit Line/Greenbelt | | to be completed by the end of the year. |

| Goal | Status as of 9/30/03 | Comments |
|-------------------------|----------------------|--|
| Study in conjunction | | Mayor Kennedy and Mayor Pro Tempore |
| with the County and the | | Chang are the Council's representatives to |
| City of San Jose. | | the committee. |

8. Goals for the Downtown

| Goal | Status as of 9/30/03 | Comments |
|--------------------------|----------------------|--|
| a. Adopt the Downtown | In progress. | The Council and RDA reviewed the Plan |
| Master Plan by April and | | in May 2003. It will not formally be |
| begin implementation. | | "adopted" until the EIR and General Plan |
| | | changes have been considered by the |
| | | Planning Commission. The Economic |
| | | Development Subcommittee |
| | | recommended, and the Council approved |
| | | on 9/24/03, changes to the Municipal |
| | | Code which will facilitate conversion of |
| | | downtown residential units to commercial |
| | | uses. |

9. Goals for Economic Development

| Goal | Status as of | Comments |
|--------------------------|--------------|---|
| | 9/30/03 | |
| a. Adopt a strategy, | Complete. | The Economic Development Strategy was |
| including priorities for | | adopted on 5/7/03. The Council approved |
| City staff efforts and | | the Subcommittee's recommendation for a |
| criteria for economic | | "request for concept" process. |
| development assistance. | | |
| b. Economic | In progress. | Council approved review criteria for the |
| Development | | selection process on 9/24/03. Allocation is |
| Subcommittee to | | expected to be complete in 2004. |
| recommend allocation of | | |
| RDA funds for | | |
| competition for | | |
| downtown projects. | | |

10. Goals for Promoting the Arts

| Goal | Status as of 9/30/03 | Comments |
|--|-----------------------------|---|
| a. Support the efforts of the Morgan Hill Community Foundation to establish non- governmental programs | In progress. | The City Manager has met with officers of the Community Foundation, and it they intend to provide a progress report to the Council in October 2003. |

| Goal | Status as of 9/30/03 | Comments |
|--|----------------------|---|
| for the arts, and request the Foundation to report to the Council on its progress. | | |
| b. Conduct a workshop on a possible program to require "1%" investment in public art. | Complete. | The Council had a workshop on public art on 8/27/03, and discussed it further at the 9/24/03 Council meeting. |

11. Goals for Sister Cities

| Goal | Status as of 9/30/03 | Comments |
|---|----------------------|---|
| a. Continue financial support for sister cities at some level. | Complete. | \$3,400 included in 2003/04 budget. |
| b. Evaluate proposals for additional sister cities as they are presented. | Complete. | No proposals are being evaluated at this time, though the committee will evaluate potential new sister city relationships as they are proposed. |

12. Goals for Day-to-Day Operations

| Goal | Status as of | Comments |
|----------------------------|--------------|---|
| | 9/30/03 | |
| a. Conduct a workshop | In progress. | The workshop on service level standards |
| on service level standards | | is scheduled for December 17, 2003. |
| to be adopted by the | | |
| Council. | | |
| b. Expand use of the | Complete. | Each department workplan for 2003/04 |
| performance measures | | includes a project to obtain customer |
| including customer | | satisfaction data. |
| satisfaction measures. | | |

13. Goals for Council Working Relationships

| Goal | Status as of 9/30/03 | Comments |
|--|-----------------------------|---|
| a. Establish a clear mission, guidelines, and reporting relationships for commissions, committees, and task forces. | Complete. | Whenever the Council approves a new committee or task force, the specific mission and schedule is presented along with the agenda item. |
| b. Include an opportunity | Complete. | "Committee Reports" are now a standing |

| Goal | Status as of 9/30/03 | Comments |
|---|-----------------------------|--|
| for "committee reports" on Council agendas. | | item on the Council's agenda. |
| c. City Manager to share with senior executive staff the Council's preferred decision-making approach and "characteristics of good work." | Complete. | Senior staff has been briefed on the results of the Council's goal setting retreat including the Council's preferred approach to decision-making and "characteristics of good work." |

14. Goals for Emerging Issues and Projects

| Goal | Status as of 9/30/03 | Comments |
|--|----------------------|---|
| a. Continue to monitor opportunities for a future community-wide visioning process. | In progress. | |
| b. Continue to monitor opportunities for submitting a future application to the All America Cities competition. | In progress. | |
| c. Following the Round II decision on new library construction, schedule a workshop to review priorities, location, and funding for all remaining municipal buildings. | In progress. | The workshop had been scheduled for 10/22/03 but will need to be moved, as the status of the library grant will not be known until November 2003. |

| Agenda Item # 12 | _ |
|------------------------|---|
| Prepared By: | |
| Asst. to the City Mgr. | |
| Submitted By: | |
| City Manager | |

UPDATE ON DEVELOPMENT PROCESSING SERVICES STUDY IMPLEMENTATION

RECOMMENDED ACTION

- **1. Accept report** on the implementation status of Development Processing Services Study recommendations.
- **2. Direct staff** to report back on implementation status in April 2004.

EXECUTIVE SUMMARY:

In Fall 2002, the Council received a report from MAXIMUS, Inc. with 39 recommendations for improving the City's development processing services. Since that time, staff have been working to address the recommendations made. Staff last updated the Council on the status of the recommendations on April 16, 2003, and scheduled this follow-up report at that time.

The table in Attachment A shows the current status of each of the recommendations made by MAXIMUS. Twenty-four recommendations have already been put into practice and three more will be complete within the next six months. These include development of an Architectural Review Board Handbook and Design Review Ordinance, and the March 2004 ballot measure on updating Measure P.

As was true in April, five recommendations have been deferred due to budget constraints. With capital investments in City operations currently on hold, it is not possible to implement the recommendations related to expanded use of the Tidemark automated permitting and project staffing software, or to integrate Geographic Information Systems (GIS) software with Tidemark. In addition, the City's hiring freeze has prevented filling the Senior Planner vacancy on an ongoing basis, and the creation of a full-time position for a building maintenance supervisor also is on hold.

Within the next year, the update of the Planning Division's Policy and Procedures Manual will achieve three of the outstanding recommendations. Most of the remaining recommendations are ones for which the study suggested longer timelines for completion, such as the creation of a one-stop permitting center, and the ability to issue permits online.

FISCAL IMPACT:

No budget adjustment required at this time.

Attachment A

Status Report on Implementation of Study Recommendations

| No. | Recommendation | Pri- ority | Timeline to Initiate | Responsibility | Cost | Currently budgeted? If not, staff funding recommendations | Current status of this recommen- dation | Staff comments about implementing this recommendation |
|-----|--|---------------|--|---|---|---|---|---|
| | | | | Cross-depa | rtmental Recommenda | tions | | |
| 1.0 | Implement automated permitting & project tracking in all divisions. Provide tech support and training | 1 | Underway | Community Development Director/Public Works Director | No additional capital cost for CDD. \$50,000 cost for PW is budgeted in current year. Minimal cost for BAHS training. | Implementing Tidemark is underway in Planning, and budgeted in Public Works. However, significant additional costs are likely to arise. See staff comments. | Deferred due to budget constraints. | |
| 1.1 | Acquire capability to provide online access for issuance of simple permits, for inspection requests and to provide access to project status | 2 | Within 3 years. (Depends on availability of reliable software) | Community Development Director/Public Works Director | IVR system in place for inspection requests by phone. Capital cost for e-permitting, incl. project status approx. \$125,000. Maint. cost \$6,000 per yr. | | Pending. On schedule for 05/06 implemen- tation, as recommended. | Based on reports from other communities, this technology is not fully functional at this time. Staff plans to wait until FY 05/06, in order to deploy a product that has been tested and reliably used elsewhere. |
| 1.2 | Acquire capability to integrate GIS with the permitting system | 2 | FY 2003- 04 | Public Works Director | Capital cost approx. \$10,000. Annual maint. cost unknown | Not budgeted. | Deferred due to budget constraints. | A GIS needs analysis has been completed. |

| No. | Recommendation | Pri- ority | Timeline to Initiate | Responsibility | Cost | Currently budgeted? If not, staff funding recommendations | Current status of this recommen- dation | Staff comments about implementing this recommendation |
|-----|---|---------------|----------------------------|---|--------------|--|--|---|
| 2.0 | Work toward creation of a one-stop permitting center housing all development review departments | 3 | FY2007-08 | City Manager/ City Council | Unknown | Remodeling the library for City use is in the CIP budget for FY 03-04. However, best estimates at this time are that the earliest this could occur is in FY 05-06. | Pending approval of library grant for construction of new library. | The current CIP assumes that a new Library will be built on Alkire Road and that the old library will be remodeled and used by CDD and PW staff. |
| 2.1 | Assign Engineering representative to City Hall part-time | 1 | FY 2002- 03 | Public Works Director | Minimal cost | No budget impact. | Completed. | Assignment began November 11, 2002. |
| 3.0 | Obtain expedited processing for economically important projects through the Econ. Dev. Coordinating Group and division managers | 1 | Immediate | BAHS Director/ Community Development Director/Public Works Director | No cost | No budget impact. | Complete, and ongoing. | This procedure has been incorporated. Staff will continue to evaluate the effectiveness of our procedures for processing economically important projects. |
| 3.1 | Document schedules for expedited processing of economically important projects | 1 | Immediate | BAHS Director/ Division Managers | No cost | No budget impact. | Complete, and ongoing. | |

| No. | Recommendation | Pri- ority | Timeline to Initiate | Responsibility | Cost | Currently budgeted? If not, staff funding recommendations | Current status of this recommen- dation | Staff comments about implementing this recommendation |
|-----|--|---------------|----------------------------|--------------------------------------|---|---|--|--|
| | | | | Planning | Division Recommendati | ions | | |
| 4.0 | Fill Senior Planner vacancy and fund half-time contract planner | 1 | FY 2002- 03 | Community Development Director | Sr. Planner \$93,000 in current budget. Half-time contract planner approx. \$50,000 | | Deferred due to budget constraints. | The Senior Planner has not been hired due to the hiring freeze. Two contract planners handle day-to-day and long-range planning. |
| 5.0 | Upgrade performance standards and improve performance measurement for development review in Planning | 1 | FY 2002- 03 | Planning Manager | No cost | No budget impact. | In process. Work began 4/03. | The Division Policy & Procedures Manual will be updated to incorporate these recommendations. |
| 5.1 | Begin routing applications within two work days | 1 | Underway | Planning Manager | No cost | No budget impact. | Complete | |
| 5.2 | Establish timelines for initial reviews and re-submittal reviews | 1 | Immediate | Planning Manager | No cost | No budget impact. | In process | A streamlined process has been developed. Specific timelines will be included in the update of the policy and procedures manual. |

| No. | Recommendation | Pri- ority | Timeline to Initiate | Responsibility | Cost | Currently budgeted? If not, staff funding recommendations | Current status of this recommen- dation | Staff comments about implementing this recommendation |
|-----|--|---------------|----------------------------|---------------------|--|---|--|--|
| 5.3 | Comply with recommended timelines for building plan check review | 1 | When staffing allows | Planning Manager | Staffing costs shown in 4.0 | Budget adjustment made to continue contract planner position. | Complete and ongoing. | Staff meet the recommended timelines 95% of the time. When delays occur, they are typically no more than 1-2 days. Compliance is monitored through the Development Review Committee process. |
| 5.4 | Use Tidemark system to alert for deadlines and measure development review performance in Planning | 1 | FY 2002- 03 | Planning Manager | No additional cost (system is being implemented) | | Complete and ongoing. | |
| 5.5 | Track resubmittals in Planning and review when more than one is required | 1 | FY 2002- 03 | Planning Manager | No cost | No budget impact. | Complete and ongoing. | This has been added to the Division Work Plan as a performance measure. |
| 5.6 | Clarify customer service policies and notify applicants | 1 | Immediate | Planning Manager | No cost | No budget impact. | In process. Work will begin in 4/03. | To be included in the update of the policy and procedures manual. |

| No. | Recommendation | Pri- ority | Timeline to Initiate | Responsibility | Cost | Currently budgeted? If not, staff funding recommendations | Current status of this recommen- dation | Staff comments about implementing this recommendation |
|-----|---|---------------|----------------------------|---|--|---|---|---|
| 5.7 | Document meeting results in writing | 1 | Underway | Planning Manager | No cost | No budget impact. | Complete and on-going | This recommendation is already a standard practice. |
| 6.1 | Base Architectural and Site Review on definitive standards | 1 | Underway | City Council/ ARB/Comm. Dev. Director | ARB handbook and design review ord. underway. Added cost \$4,000 | Budgeted 02-03. | In process. Handbook to be developed by 12/03. | Draft of new standards was reviewed by the ARB. Work on the handbook will continue. |
| 6.2 | Cite specific standards for architectural and site design requirements | 1 | Immediate | ARB/Planning Manager | No cost | No budget impact. | Ongoing | Definitive standards will be incorporated into the Design Review Ordinance and Architectural Review Handbook. |
| 6.3 | Forward non- compliant project designs without delay to ARB for disposition | 1 | Underway | Planning Manager | No cost | No budget impact. | Complete and ongoing | This is now a standard practice. |
| 6.4 | Reconsider use of City-initiated PUD rezoning to control design of commercial developments | 2 | FY 2002- 03 | Community Development Director | Can be included in zoning ordinance update. No added cost. | No budget impact. | In process. | City to establish PUD guidelines for economically important sites. |

| No. | Recommendation | Pri- ority | Timeline to Initiate | Responsibility | Cost | Currently budgeted? If not, staff funding recommendations | Current status of this recommen- dation | Staff comments about implementing this recommendation |
|-----|---|---------------|----------------------------|-------------------------------------|-------------------------|---|--|--|
| 7.0 | Consider changes to Measure P to reduce processing time and staff workloads | 2 | FY 2003- 04 | City Council/ Voters | Possible cost reduction | | In process | Update committee has completed work. Election planned for March 2004. |
| 8.1 | Negotiate blanket contracts with consultants for environmental review | 1 | FY 2002- 03 | Planning Manager/City Council | No cost | No budget impact. | In process. To be complete by 12/03. | |
| 8.2 | Phase out multiple files for a single project | 1 | FY 2002- 03 | Planning Manager | No cost | No budget impact. | Pending | Staff are evaluating the feasibility of implementing this recommendation. Projects are being filed under single file number; however, some projects require multiple files due to the volume of paperwork. |
| | | | | Engineerin | g Division Recommends | ations | | |
| 9.1 | Reduce processing time goals for initial submittals in Engineering to 6 weeks | 1 | FY 2002- 03 | Public Works Director | Minimal cost | No budget impact. | Complete | |

| No. | Recommendation | Pri- ority | Timeline to Initiate | Responsibility | Cost | Currently budgeted? If not, staff funding recommendations | Current status of this recommen- dation | Staff comments about implementing this recommendation |
|-----|---|---------------|----------------------------|--------------------------|--------------|---|--|---|
| 9.2 | Comply with recommended timelines for building plan check review | 1 | FY 2002- 03 | Public Works Director | Minimal Cost | No budget impact. | Complete and ongoing. | |
| 9.3 | Use Tidemark system to alert for deadlines and measure development review performance in Engineering | 1 | FY 2002- 03 | Public Works Director | No cost | See notes on recommendation 1. | Deferred due to budget constraints. | See notes on recommendation 1. Deploying Tidemark in PW is currently on hold. |
| 9.4 | Track resubmittals in Engineering and review when more than two are required | 1 | FY 2002- 03 | Public Works Director | No cost | No budget impact. | Complete | |
| 9.5 | Clarify customer service policies and notify applicants | 1 | Immediate | Public Works Director | No cost | No budget impact. | Complete | |
| 9.6 | Document meeting results in writing | 1 | Immediate | Public Works Director | No cost | No budget impact. | Complete | |

| No. | Recommendation | Pri- ority | Timeline to Initiate | Responsibility | Cost | Currently budgeted? If not, staff funding recommendations | Current status of this recommen- dation | Staff comments about implementing this recommendation |
|------|---|---------------|----------------------------|----------------------------|--------------------------|---|--|---|
| 10. | Develop fast-track processing procedures in Engineering for simple projects | 1 | FY 2002- 03 | Public Works Director | Minimal cost | No budget impact. | Complete. | The processing speed has increased with the placement of an engineer at City Hall. Staff have developed written procedures. |
| | | | | Building | Division Recommendat | ions | | |
| 11.1 | Define plan check timelines for different project types in Building | 1 | Immediate | Chief Building Official | No cost | No budget impact. | Complete. | |
| 11.2 | Route building plans to other divisions within 2 work days | 1 | Immediate | Chief Building Official | No cost | No budget impact. | Complete | |
| 11.3 | Eliminate unnecessary routing of building plans to other divisions | 1 | FY 2002- 03 | Chief Building Official | No cost | No budget impact. | Complete | |
| 11.4 | Do in-house plan check for all building plans with a recommended plan check goal < 5 days | 2 | FY 2003- 04 | Chief Building Official | Possible cost reduction. | No budget impact. | Complete | |

| No. | Recommendation | Pri- ority | Timeline to Initiate | Responsibility | Cost | Currently budgeted? If not, staff funding recommendations | Current status of this recommen- dation | Staff comments about implementing this recommendation |
|------|--|---------------|----------------------------|--------------------------------------|--|---|--|---|
| 11.5 | Track review times for all units involved in plan check process and prepare reports | 1 | FY 2002- 03 | Chief Building Official | Minimal cost | No budget impact. | Complete | |
| 12.0 | Respond to 95% of building inspection requests within 1 work day and all within 2 days | 1 | Ongoing | Chief Building Official | No cost | No budget impact. | Complete | |
| 13.0 | Create a full-time position for a building maintenance supervisor | 2 | FY 2003- 04 | Community Development Director | Unknown. Much of cost should be offset by savings in contract services | Will be budgeted for FY 04-05. Staff estimate that \$12k in contract plan check fees would help offset the staffing increase. | Deferred due to budget constraints. | Staff are studying the City's facilities maintenance structure and operations, and will consider this recommendation as part of the study. |
| 14.0 | Reclassify one existing building inspector position to a senior building inspector position | 2 | FY 2003- 04 | Community Development Director | Added cost approx. \$10,000 per year | Proposed in FY 03- 04 budget. | Complete | |
| 15.0 | Develop more detailed application brochures for most common types of plan checks | 1 | FY 2003- 04 | Chief Building Official | Minimal cost | No budget impact. | Complete. | |



EMERGENCY AUTHORIZATION FOR ROADWAY REPAIR/RESURFACING OF EAST DUNNE AVENUE

RECOMMENDED ACTION(S):

- 1. Adopt the attached Resolution declaring the need for this emergency expenditure.
- 2. Approve expenditure not-to-exceed \$100,000 for emergency Roadway Repair and Resurfacing of East Dunne Avenue from Holiday Drive to the East City Limit.

Prepared By:

Deputy Director-PW

Approved by:

Public Works Director

Submitted By:

City Manager

Agenda Item #13

EXECUTIVE SUMMARY: A section of East Dunne Avenue from Holiday Drive to the East City Limit is in serious need of repair prior to winter rains. This section of roadway is approximately .9 of a mile. It is badly cracked and has several areas of failure due to land movement. Emergency funding is needed now to provide local pavement repair and to resurface the entire roadway with a chip seal treatment. This repair and resurfacing will help preserve the pavement's life and serviceability. Additional crack sealing will be done on a periodic basis to continue to extend the serviceability of the roadway and slow further deterioration from water entering the pavement. This summer the County of Santa Clara performed chip seal resurfacing to East Dunne for the section of this roadway which extends beyond the City limits into the County.

Staff has designed the local pavement repairs, chip seal resurfacing, and replacement of striping and developed a cost estimate of \$93,500 for this work. Informal bids to perform the work have been solicited from 6 contractors including a cost from the County of Santa Clara to do the chip seal resurfacing. Staff will analyze the prices received and combine them to perform the work in the most timely and economical manner.

Our finding of a public emergency to waive the public bidding process requires a four/fifths affirmative vote of the Council.

FISCAL IMPACT: There are sufficient funds in the FY 03-04 Pavement Rehabilitation budget, CIP #519096 to fund this emergency work..

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING THE NEED FOR AN EMERGENCY EXPENDITURE FOR ROADWAY REPAIR/RESURFACING OF EAST DUNNE AVENUE FROM HOLIDAY DRIVE TO THE EAST CITY LIMITS IN ACCORDANCE WITH PUBLIC CONTRACT CODE 20168

WHEREAS, an emergency currently exists for repair/resurfacing of East Dunne Avenue from Holiday Drive to the East City Limit as described in the agenda report attached hereto and incorporated herein; and

WHEREAS, unless repair is completed within the next 60 days, the roadway will sustain further drainage runoff damage; and

WHEREAS, if this section of roadway is not repaired and resurfaced now the roadway could fail during the upcoming rain season starting October 15th causing great harm to vehicles and property.

THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill that it does resolve, determine and order the following:

- 1. Emergency Roadway Repair and Resurfacing is needed to properly maintain the section of roadway of East Dunne from Holiday Drive to the east city limits in a safe and serviceable condition.
- 2. By a majority vote of those present at the City Council meeting on October 15, 2003, the Council finds, based upon the foregoing reasons, that the immediate preservation of the public peace, health and safety requires said expenditure to be made without competitive bids.
- 3. The sum of \$93,500 is hereby approved for expenditure for emergency roadway repair/resurfacing of East Dunne Avenue from Holiday Drive to the East City Limits.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 15th Day of October, 2003, by the following vote.

AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS: ABSTAIN: COUNCIL MEMBERS: COUNCIL MEMBERS:

***** CERTIFICATION *****

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No., adopted by the City Council at a Regular Meeting held on October 15, 2003.

| DATE: | |
|--------------|-------------------------|
| | IRMA TORREZ, City Clerk |

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.



CITY COUNCIL STAFF REPORT MEETING DATE: OCTOBER 15, 2003

ADOPT ORDINANCE NO. 1637, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-07: CENTRAL-CENTRAL PARK (APN 726-27-104 & 105)

| Agenda Item #14 | |
|--------------------------|--|
| Prepared By: | |
| Deputy City Clerk | |
| Approved By: | |
| City Clerk | |
| Submitted By: | |
| City Manager | |

RECOMMENDED ACTION(S):

<u>Waive</u> the Reading, and <u>Adopt</u> Ordinance No. 1637, New Series, and <u>Declare</u> That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On October 1, 2003, the City Council Introduced Ordinance No. 1637, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1637, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-07: CENTRAL-CENTRAL PARK (APN 726-27-104 & 105)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 03-17a and 03-17b, adopted May 27, 2003, has awarded allotments to a certain project herein after described as follows:

<u>Project</u> <u>Total Dwelling Units</u> MP-02-25: Central-Central Park 39 Single-Family Homes

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

City of Morgan Hill Ordinance No. 1637, New Series Page -2 –

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 1st Day of October 2003, and was finally adopted at a regular meeting of said Council on the 15th Day of October 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

| - | <u> </u> | _ |
|----------------|--|---|
| AYES: | COUNCIL MEMBERS: | |
| NOES: | COUNCIL MEMBERS: | |
| | COUNCIL MEMBERS: | |
| ABSENT: | | |
| ADSENI. | COUNCIL MEMBERS. | |
| ATTEST: | | APPROVED: |
| | | |
| Irma Torrez | , City Clerk | Dennis Kennedy, Mayor |
| | | |
| I, IR | | TE OF THE CITY CLERK GOOD CLERK OF THE CITY OF MORGAN HILL, |
| | | he foregoing is a true and correct copy of Ordinance No. |
| | , | Council of the City of Morgan Hill, California at their |
| | ng held on the 15 th Day of O | |
| regular meetii | ing field off the 15 Bay of O | (1000) |
| WITN | NESS MY HAND AND TH | IE SEAL OF THE CITY OF MORGAN HILL. |
| | | |
| DATE: | | |
| | | IRMA TORREZ, City Clerk |



CITY COUNCIL STAFF REPORT MEETING DATE: OCTOBER 15, 2003

ADOPT ORDINANCE NO. 1638, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 03-08 FOR APPLICATION MP 02-24: SUNNYSIDE-QUAIL CREEK. (APN 767-29-006)

| <u> </u> | Agenda Item # 15 |
|--------------|-------------------|
| I | Prepared By: |
| Ī | Deputy City Clerk |
| A | Approved By: |
| (| City Clerk |
| 5 | Submitted By: |
| - | City Manager |
| | |

RECOMMENDED ACTION(S):

<u>Waive</u> the Reading, and <u>Adopt</u> Ordinance No. 1638, New Series, and <u>Declare</u> That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On October 1, 2003, the City Council Introduced Ordinance No. 1638, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1638, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 03-08 FOR APPLICATION MP 02-24: SUNNYSIDE-QUAIL CREEK. (APN 767-29-006)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 03-17a & b, adopted May 27, 2003, has awarded allotments to that certain project herein after described as follows:

Project Total Dwelling Units

MP 02-24: Sunnyside-Quail Creek 22 Single-Family Homes

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance (and attached hereto) are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

City of Morgan Hill Ordinance No. 1638, New Series Page -2-

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 1st Day of October 2003, and was finally adopted at a regular meeting of said Council on the 15th Day of October 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

| AYES: | COUNCIL MEMBERS: | |
|--------------|-------------------------|--|
| NOES: | COUNCIL MEMBERS: | |
| ABSTAIN: | COUNCIL MEMBERS: | |
| ABSENT: | COUNCIL MEMBERS: | |
| ATTEST: | | APPROVED: |
| Irma Torrez | , City Clerk | Dennis Kennedy, Mayor |
| I, IR | | TE OF THE CITY CLERK OF MORGAN HILL |
| 1638, New S | | e foregoing is a true and correct copy of Ordinance No Council of the City of Morgan Hill, California at their ctober, 2003. |
| WIT | NESS MY HAND AND TH | E SEAL OF THE CITY OF MORGAN HILL. |
| DATE: | | |
| | | IRMA TORREZ, City Clerk |

Submitted for Approval: October 17, 2003

CITY OF MORGAN HILL SPECIAL CITY COUNCIL MEETING MINUTES – SEPTEMBER 24, 2003

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 6:13 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Chang, Sellers, Tate and Mayor Kennedy.

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CLOSED SESSIONS:

City Attorney Leichter announced the following closed session item.

1.

EXISTING LITIGATION

Legal Authority: Government Code section 54956.9(a)

Court: California Court of Appeal, First Appellate District

Case Name: Santa Teresa Citizen Action Group, City of Morgan Hill, et al. v. Hearing Board

of the Bay Area Quality Management District, et al.

Case Number: A102518

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 6:15 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that no action was taken on the City Attorney's performance review in closed session and that the remainder of the closed session items would be continued to the conclusion of the open Special/Regular Joint City Council/Redevelopment Agency meeting.

City of Morgan Hill Joint Special & Regular Redevelopment Agency and Special City Council Meeting Minutes – September 24, 2003 Page - 2 -

CLOSED SESSION

City Attorney Leichter announced the closed session item that was continued from earlier this evening.

RECONVENE TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 9:30 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 9:40 p.m.

MINUTES RECORDED AND PREPARED BY:

CLOSED SESSION ANNOUNCEMENT

City Attorney Leichter announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 9:41 p.m.

| IRMA TORREZ, CITY CLERK | |
|-------------------------|--|



CITY COUNCIL STAFF REPORT MEETING DATE: October 15, 2003

SEPTEMBER 2003 FINANCE & INVESTMENT REPORT

| Agenda Item # 17 |
|------------------|
| Prepared By: |
| |
| Finance Director |
| |
| Submitted By: |
| |
| City Manager |
| |

RECOMMENDED ACTION:

Accept and File Report

EXECUTIVE SUMMARY:

Attached is the monthly Finance and Investment Report for the period ended September 30, 2003. The report covers the first three months of activity for the 2003/2004 fiscal year. A summary of the report is included on the first page for the City Council's benefit.

The monthly Finance and Investment Report is presented to the City Council and our Citizens as part of our ongoing commitment to improve and maintain public trust through communication of our finances, budget and investments. The report also serves to provide the information necessary to determine the adequacy/stability of financial projections and develop equitable resource/revenue allocation procedures.

This report covers all fiscal activity in the City, including the Redevelopment Agency. The Redevelopment Agency receives a separate report for the fiscal activity of the Agency at the meeting of the Agency. Presenting this report is consistent with the goal of *Maintaining and Enhancing the Financial Viability of the City*.

FISCAL IMPACT: as presented

CITY OF MORGAN HILL Monthly Financial and Investment Reports

September 30, 2003 – 25% Year Complete



Prepared by:

FINANCE DEPARTMENT



CITY OF MORGAN HILL, CALIFORNIA FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2003/04 FOR THE MONTH OF SEPTEMBER 2003 - 25% OF YEAR COMPLETE

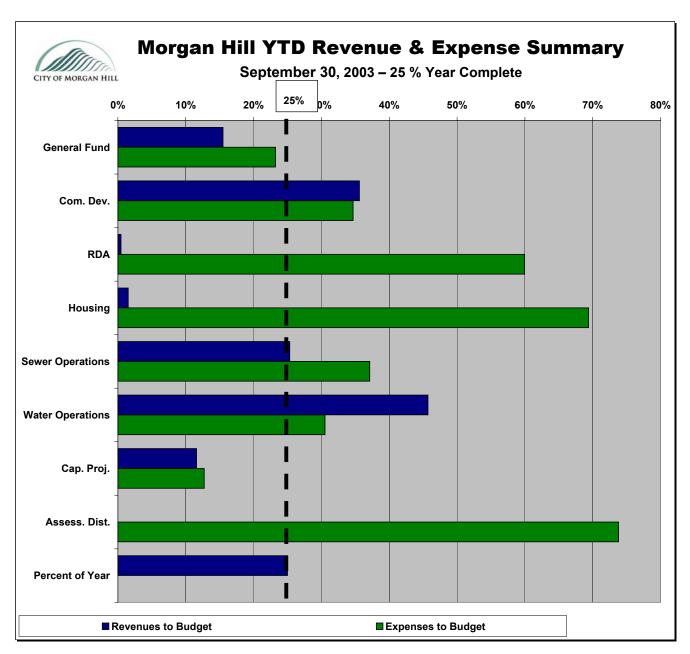
This analysis of the status of the City's financial situation reflects 25% of the year.

- * General Fund The revenues received in the General Fund were approximately 16% of the budgeted revenues. The amount of Sales Tax collected was 22% of the sales tax revenue budget and was 13% less than the amount collected for the same period last year. Business license and other permit collections were 64% of the budgeted amount, a 3% decrease over the same period last year. Business license renewal fees are due in July; therefore the higher percent of budget collected early in the year is normal. Motor Vehicle-in-Lieu revenues were 12% of the budgeted amount, 45% less than the amount received at this time last year. This drop in Motor Vehicle-in-Lieu fees was caused by the State's elimination of the "State backfill" for these fees and the delay until October of the implementation of higher fees that will offset this loss, resulting in much lower fees for July, August, and September 2003. Interest & Other Revenue were 18% of budget and do not reflect most interest earnings, which will be posted following the end of the first quarter in October. Many of the current year revenues are not yet received this early in the year. Property taxes, franchise fees and transient occupancy taxes, along with LAIF interest earnings, are not received by the City until later in the year.
- * The General Fund expenditures and encumbrances to date totaled 23% of the budgeted appropriations. The outstanding encumbrances in several activities are encumbrances for projects started but not completed in the prior year and carried forward to the current fiscal year.
- * Transient Occupancy (Hotel) Tax The TOT rate is 10%. The City receives transient occupancy tax on a quarterly basis. Taxes for the first quarter of the current year will be received in October 2003, so no taxes have been received yet. The negative (\$2,945) amount shown for these taxes relates to a small refund made to one of the hotels, based upon their claim.
- * Community Development Revenues were 36% of budget, which was 40% more than the amount collected in the like period for the prior year. Planning expenditures plus encumbrances were 43% of budget; Building has expended or encumbered 24% of budget and Engineering 36%. Community Development has expended or encumbered a combined total of 35% of the 2003/04 budget, including \$474,786 in encumbrances. If encumbrances were excluded, Community Development would have spent only 20% of the combined budget.
- * RDA and Housing –Property tax increment revenues amounting to \$129,521 have been received as of September 30, 2003. The great bulk of these revenues will be received later in the fiscal year. Expenditures plus encumbrances totaled 56% of budget. If encumbrances totaling \$14,640,266 were excluded, the RDA would have spent only 26% of the combined budget. In July, the RDA spent \$3.4 million toward the Courthouse Project acquisition. In August, the Agency made a \$2.55 million installment payment toward the purchase of the Sports Fields Complex property, incurred \$2.4 million in acquisition and construction costs related to the Butterfield Blvd. Phase IV Project, and incurred \$60,000 in Tennant Avenue Widening Project acquisition costs. In July, the Agency also made a loan to South County Housing for the Royal Court Housing Project.



HILL CITY OF MORGAN HILL, CALIFORNIA FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2003/04 FOR THE MONTH OF SEPTEMBER 2003 - 25% OF YEAR COMPLETE

- * Water and Sewer Operations- Water Operations revenues, including service fees, were 46% of budget. Expenditures totaled 31% of appropriations. Sewer Operations revenues, including service fees, were 25% of budget. Expenditures for sewer operations were 37% of budget. The amount spent to date for sewer operations is high because it includes a scheduled \$1.4 million August debt service payment on outstanding sewer bonds.
- * Investments maturing/called/sold during this period. During the month of August, \$2 million in federal agency investments was called, due to declining interest rates. Further details of all City investments are contained on pages 6-8 of this report.



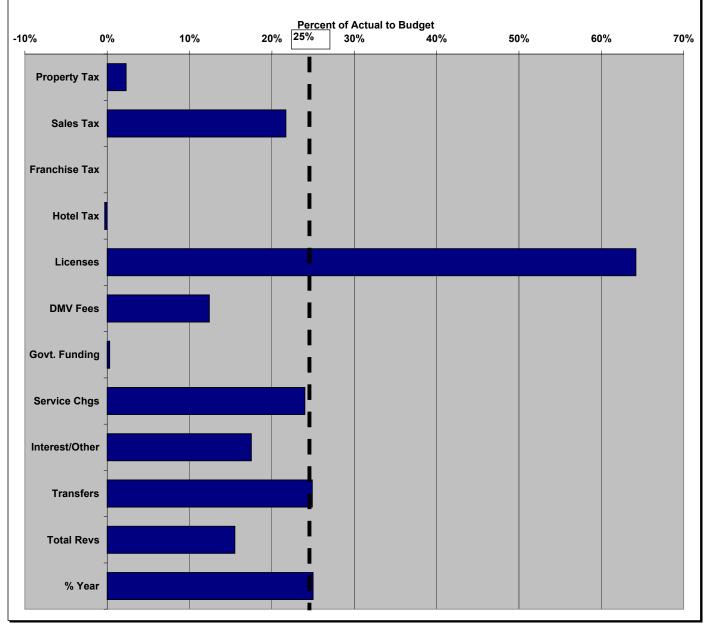
| | REVENU | JES | EXPENS | 9/30/2003 | |
|----------------------------------|--------------|--------|---------------------|-----------|--------------|
| | | % OF | ACTUAL plus | % OF | UNRESTRICTED |
| FUND NAME | ACTUAL | BUDGET | ENCUMBRANCES | BUDGET | FUND BALANCE |
| | | | | | |
| General Fund | \$2,491,620 | 16% | \$3,853,413 | 23% | \$9,774,712 |
| Community Development | 810,323 | 36% | 1,115,835 | 35% | 1,246,218 |
| RDA | 109,225 | 0% | 23,959,514 | 60% | -5,261,425 |
| Housing/CDBG | 60,883 | 2% | 3,364,912 | 69% | 3,105,252 |
| Sewer Operations | 1,390,266 | 25% | 2,789,451 | 37% | 3,631,185 |
| Sewer Other | 960,387 | 77% | 716,344 | 13% | 11,592,478 |
| Water Operations | 3,232,894 | 46% | 2,384,735 | 31% | 3,426,879 |
| Water Other | 292,368 | 27% | 1,637,638 | 41% | 3,264,756 |
| Other Special Revenues 1 | 123,834 | 16% | 581,308 | 23% | 2,583,356 |
| Capital Projects & Streets Funds | 1,555,775 | 12% | 2,904,931 | 13% | 23,460,092 |
| Debt Service Funds | | n/a | 174,402 | 74% | 333,977 |
| Internal Service | 874,552 | 22% | 1,269,100 | 31% | 4,197,438 |
| Agency | 60,385 | 2% | 2,201,740 | 84% | 3,059,363 |
| 1 | | | | | |
| TOTAL FOR ALL FUNDS | \$11,962,512 | 15% | \$46,953,323 | 37% | \$64,414,281 |

¹ Includes all Special Revenue Funds except Community Development, CDBG, and Street Funds



Morgan Hill YTD General Fund Revenues

September 30, 2003 – 25% Year Complete

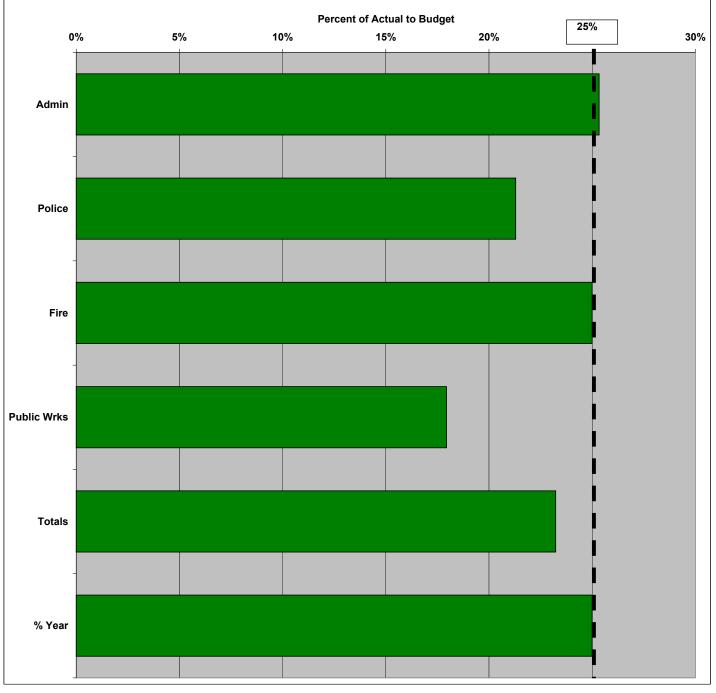


| | | | % OF | PRIOR YEAR | % CHANGE FROM |
|------------------------------------|--------------|-------------|--------|-------------|---------------|
| REVENUE CATEGORY | BUDGET | ACTUAL | BUDGET | TO DATE | PRIOR YEAR |
| | | | | | |
| PROPERTY RELATED TAXES | \$2,440,000 | \$56,982 | 2% | \$62,462 | -9% |
| SALES TAXES | \$4,923,000 | \$1,068,245 | 22% | \$1,227,869 | -13% |
| FRANCHISE FEE | \$961,180 | | | | n/a |
| HOTEL TAX | \$890,000 | -\$2,945 | 0% | | n/a |
| LICENSES/PERMITS | \$202,600 | \$130,155 | 64% | \$134,751 | -3% |
| MOTOR VEHICLE IN LIEU | \$2,080,000 | \$257,298 | 12% | \$547,432 | -53% |
| FUNDING - OTHER GOVERNMENTS | \$271,900 | \$888 | 0% | \$3,658 | -76% |
| CHARGES CURRENT SERVICES | \$2,588,137 | \$619,963 | 24% | \$504,046 | 23% |
| INTEREST & OTHER REVENUE | \$893,050 | \$156,034 | 18% | \$59,772 | 161% |
| TRANSFERS IN | \$823,986 | \$205,000 | 25% | \$8,750 | 2243% |
| | | | • | • | |
| TOTALS | \$16,073,853 | \$2,491,620 | 16% | \$2,548,740 | -2% |



Morgan Hill YTD General Fund Expenditures

September 30, 2003 – 25% Year Complete



| Expenditure Category | Budget | ctual Plus cumbrances | % of Budget | |
|----------------------|------------------|------------------------------|-------------|--|
| ADMINISTRATION | 5,205,392 | 1,318,928 | 25% | |
| POLICE | 6,812,300 | 1,450,609 | 21% | |
| FIRE | 3,745,220 | 936,244 | 25% | |
| PUBLIC WORKS | 822,840 | 147,632 | 18% | |
| | | | | |
| TOTALS | \$ 16,585,752 | \$ 3,853,413 | 23% | |



City of Morgan Hill Fund Activity Summary - Fiscal Year 2003/04 For the Month of September 30, 2003 25% of Year Completed

| | | Unaudited | Revenues | 10,000.10 | Expenses | | Year to-Date | Ending Fun | d Balance | Cash and In | vestments |
|-----------|-------------------------------|---------------------|--------------------|------------|---------------------|------------|-----------------------|-----------------------|---------------------|---------------------|-------------------------|
| Fund | | Fund Balance | YTD | % of | YTD | % of | Deficit or | | | | |
| No. | Fund | 06-30-03 | Actual | Budget | Actual | Budget | Carryover | Reserved ¹ | Unreserved | Unrestricted | Restricted ² |
| 010 | GENERAL FUND | \$11,136,505 | \$2,491,620 | 16% | \$3,509,390 | 21% | (\$1,017,770) | \$344,023 | \$9,774,712 | \$10,561,637 | \$4,150 |
| TOTAL G | ENERAL FUND | <u>\$11,136,505</u> | <u>\$2,491,620</u> | <u>16%</u> | \$3,509,390 | <u>21%</u> | <u>(\$1,017,770)</u> | <u>\$344,023</u> | <u>\$9,774,712</u> | <u>\$10,561,637</u> | <u>\$4,150</u> |
| 202 | STREET MAINTENANCE | \$1,683,131 | \$462,434 | 34% | \$326,743 | 11% | \$135,691 | \$806,050 | \$1,012,772 | \$1,625,442 | |
| 204/205 | PUBLIC SAFETY/SUPPL. LAW | \$485,350 | | n/a | \$68,396 | 25% | (\$68,396) | . , | \$416,954 | \$416,954 | |
| 206 | COMMUNITY DEVELOPMENT | \$1,551,730 | \$810,323 | 36% | \$641,049 | 20% | \$169,274 | \$474,786 | \$1,246,218 | \$1,756,006 | |
| 207 | GENERAL PLAN UPDATE | \$190,845 | \$22,850 | 30% | \$4,889 | 2% | \$17,961 | \$126,156 | \$82,650 | \$208,894 | |
| 210 | COMMUNITY CENTER | \$360,157 | | n/a | \$78,000 | 25% | (\$78,000) | | \$282,157 | \$282,157 | |
| 215 / 216 | CDBG | \$636,136 | \$5,509 | 4% | \$6,097 | 2% | (\$588) | 451,087 | \$184,461 | \$203,317 | |
| 220 | MUSEUM RENTAL | \$1,274 | | n/a | \$479 | 20% | (\$479) | | \$795 | \$794 | |
| 225 | ASSET SEIZURE | \$38,096 | | n/a | | n/a | | | \$38,096 | \$38,096 | |
| 226 | OES/FEMA | | | | | | | | | | |
| 229 | LIGHTING AND LANDSCAPE | \$33,766 | | n/a | \$36,710 | 22% | (\$36,710) | \$10,779 | (\$13,723) | (\$2,656) | |
| 232 | ENVIRONMENT PROGRAMS | \$613,697 | \$91,559 | 24% | \$81,715 | 16% | \$9,844 | \$102,570 | \$520,971 | \$544,323 | |
| 234 | MOBILE HOME PK RENT STAB. | \$9,808 | \$3,024 | 48% | \$37,213 | 94% | (\$34,189) | \$24,901 | (\$49,282) | (\$24,381) | |
| 235 | SENIOR HOUSING | \$255,610 | | n/a | | | | | \$255,610 | \$255,610 | |
| 236 | HOUSING IN LIEU | \$1,043,306 | | n/a | - | | | - | \$1,043,306 | \$1,043,308 | |
| 240 | EMPLOYEE ASSISTANCE | \$8,921 | \$6,401 | 32% | 9,500 | 48% | (\$3,099) | | \$5,822 | \$3,213 | |
| TOTAL S | PECIAL REVENUE FUNDS | \$6,911,827 | <u>\$1,402,100</u> | <u>31%</u> | <u>\$1,290,791</u> | <u>14%</u> | <u>\$111,309</u> | <u>\$1,996,329</u> | <u>\$5,026,807</u> | <u>\$6,351,077</u> | |
| | | | | | | | | | | | |
| 301 | PARK DEV. IMPACT FUND | \$3,191,630 | \$267,542 | 61% | \$27,762 | 1% | \$239,780 | \$109,082 | \$3,322,328 | | \$3,431,410 |
| 302 | PARK MAINTENANCE | \$2,909,243 | \$39,205 | 15% | \$50,000 | 25% | (\$10,795) | | \$2,898,448 | \$2,898,448 | |
| 303 | LOCAL DRAINAGE | \$2,910,954 | \$46,800 | 16% | \$5,519 | 0% | \$41,281 | | \$2,952,235 | | \$2,952,235 |
| 304 | LOCAL DRAINAGE/NON-AB1600 | \$3,276,514 | \$36,000 | 23% | \$7,967 | 4% | \$28,033 | | \$3,304,547 | \$3,184,547 | |
| 305 | OFF-STREET PARKING | \$4,020 | | n/a | | | | | \$4,020 | \$4,020 | |
| 306 | OPEN SPACE | \$458,488 | | n/a | | | | \$10,000 | \$448,488 | \$458,488 | |
| 309 | TRAFFIC IMPACT FUND | \$2,826,115 | \$522,929 | 79% | \$20,561 | 1% | \$502,368 | \$549,428 | \$2,779,055 | | \$3,314,960 |
| 311 | POLICE IMPACT FUND | \$1,183,045 | \$21,629 | 42% | \$11,661 | 1% | \$9,968 | \$10,000 | \$1,183,013 | | \$1,193,013 |
| 313 | FIRE IMPACT FUND | \$2,603,859 | \$77,770 | 53% | \$386 | 0% | \$77,384 | | \$2,681,243 | | \$2,681,243 |
| 317 | REDEVELOPMENT AGENCY | \$20,860,548 | \$109,225 | 0% | \$9,359,987 | 23% | (\$9,250,762) | 16,871,211 | (\$5,261,425) | \$9,351,401 | |
| | HOUSING | \$24,240,428 | \$55,374 | 1% | \$3,315,584 | 39% | (\$3,260,210) | 18,059,426 | \$2,920,791 | \$2,967,079 | |
| 340 | MORGAN HILL BUS.RANCH I | \$48,290 | | n/a | | | | | \$48,290 | \$48,290 | |
| 342 | MORGAN HILL BUS.RANCH II | \$54,233 | \$307 | n/a | | | \$307 | | \$54,540 | \$54,233 | |
| 346 | PUBLIC FACILITIES NON-AB1600 | \$1,332,714 | \$24,000 | 0% | 583 | | \$23,417 | | \$1,356,131 | \$1,356,131 | |
| 347 | PUBLIC FACILITIES IMPACT FUND | \$665,032 | \$33,654 | 72% | \$106,304 | 6% | (\$72,650) | \$872,720 | (\$280,338) | | \$555,712 |
| 348 | LIBRARY IMPACT FUND | \$414,456 | \$23,505 | 76% | \$56 | 25% | \$23,449 | | \$437,905 | | \$437,904 |
| 350 | UNDERGROUNDING | \$1,257,217 | - | n/a | \$109 | 0% | (\$109) | | \$1,257,108 | \$1,257,110 | |
| 360 | COMM/REC CTR IMPACT FUND | | 307 | n/a | <u> </u> | 0% | \$307 | | \$307 | \$307 | |
| TOTAL C | APITAL PROJECT FUNDS | <u>\$68,236,786</u> | <u>\$1,258,247</u> | <u>3%</u> | <u>\$12,906,479</u> | <u>19%</u> | <u>(\$11,648,232)</u> | <u>\$36,481,867</u> | <u>\$20,106,686</u> | <u>\$21,580,054</u> | <u>\$14,566,477</u> |
| 527 | HIDDEN CREEK | | | n/a | | | | | | | |
| 533 | DUNNE/CONDIT | | | n/a | | | | | | | |
| 536 | ENCINO HILLS | \$68,027 | | n/a | | | | | \$68,027 | \$68,027 | |
| 539 | MORGAN HILL BUS. PARK | \$11,867 | · | n/a | | | | | \$11,867 | \$11,867 | |
| 542 | SUTTER BUSINESS PARK | \$24,910 | | n/a | | | | | \$24,910 | \$24,910 | |
| 545 | COCHRANE BUSINESS PARK | \$374,418 | | n/a | \$145,225 | 74% | (\$145,225) | | \$229,193 | \$48,243 | \$180,950 |
| 551 | JOLEEN WAY | \$29,157 | | n/a | \$29,177 | 72% | (\$29,177) | | (\$20) | (\$17,269) | \$17,250 |
| TOTAL D | EBT SERVICE FUNDS | <u>\$508,379</u> | | <u>n/a</u> | <u>\$174,402</u> | <u>74%</u> | (\$174,402) | | <u>\$333,977</u> | <u>\$135,778</u> | <u>\$198,200</u> |



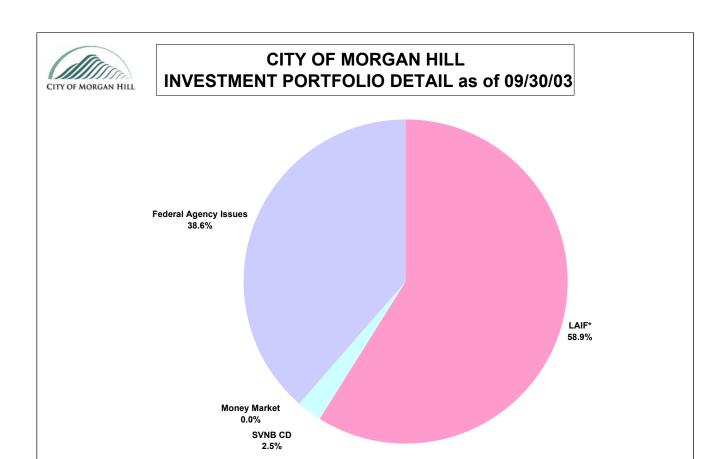
City of Morgan Hill Fund Activity Summary - Fiscal Year 2003/04 For the Month of September 30, 2003 25% of Year Completed

| | | Unaudited | Revenues | | Expenses | | Year to-Date | Ending Fun | d Balance | Cash and In | vestments |
|------------|----------------------------|----------------------|---------------------|------------|---------------------|------------|----------------------|-----------------------|------------------------|---------------------|-------------------------|
| Fund | | Fund Balance | YTD | % of | YTD | % of | Deficit or | | | | |
| No. | Fund | 06-30-03 | Actual | Budget | Actual | Budget | Carryover | Reserved ¹ | Unreserved | Unrestricted | Restricted ² |
| | | | | • | | • | | | | | |
| 640 | SEWER OPERATIONS | \$16,004,091 | \$1,390,266 | 25% | \$2,679,951 | 36% | (\$1,289,685) | \$11,083,221 | \$3,631,185 | \$3,291,130 | \$1,898,140 |
| 641 | SEWER IMPACT FUND | \$7,772,110 | \$835,387 | 133% | \$147,232 | 4% | \$688,155 | 3,361,401 | \$5,098,864 | . , , | \$5,375,191 |
| 642 | SEWER RATE STABILIZATION | \$3,804,228 | | n/a | \$592 | 25% | (\$592) | | \$3,803,636 | \$3,803,635 | |
| 643 | SEWER-CAPITAL PROJECTS | \$9,683,556 | \$125,000 | 24% | \$240,396 | 15% | (\$115,396) | 6,878,182 | \$2,689,978 | \$2,863,224 | |
| 650 | WATER OPERATIONS | \$21,476,576 | \$3,232,894 | 46% | \$1,640,477 | 4% | \$1,592,417 | \$19,642,113 | \$3,426,879 | \$3,105,885 | \$390,761 |
| 651 | WATER IMPACT FUND | \$3,271,280 | \$292,368 | 44% | \$177,485 | 7% | \$114,883 | 4,283,484 | (\$897,322) | | |
| 652 | WATER RATE STABILIZATION | \$867,428 | | n/a | \$212,638 | 25% | (\$212,638) | | \$654,790 | \$654,790 | |
| 653 | WATER -CAPITAL PROJECT | \$9,092,130 | | n/a | \$21,007 | 1% | (\$21,007) | 5,563,835 | \$3,507,288 | \$3,836,473 | |
| TOTAL E | NTERPRISE FUNDS | <u>\$71,971,399</u> | <u>\$5,875,915</u> | <u>39%</u> | <u>\$5,119,778</u> | <u>19%</u> | <u>\$756,137</u> | <u>\$50,812,236</u> | <u>\$21,915,298</u> | <u>\$17,555,137</u> | <u>\$7,664,092</u> |
| 730 | DATA PROCESSING | \$436,026 | \$61,315 | 25% | \$53,909 | 20% | \$7,406 | 209,982 | \$233,450 | \$391,372 | |
| 730 740 | BUILDING MAINTENANCE | \$400,151 | \$224,213 | 25% | \$82,516 | 12% | \$141,697 | 26,668 | \$233,450 \$515,180 | \$553,970 | |
| 740 745 | CIP ADMINISTRATION | \$59,437 | \$294,343 | 20% | \$294,343 | 19% | \$141,097 | 163,799 | (\$104,362) | \$101,080 | |
| 760 | UNEMPLOYMENT INS. | \$47,278 | \$7,363 | 25% | ΨZ94,343 | 1970 | \$7,363 | 103,799 | \$54,641 | \$54,641 | |
| 770 | WORKER'S COMP. | \$6,147 | \$108,785 | 16% | \$168,695 | 23% | (\$59,910) | 36,574 | (\$90,337) | \$498,857 | \$40,000 |
| 770 790 | EQUIPMENT REPLACEMENT | \$3,379,971 | \$50,937 | 26% | \$9,557 | 4% | \$41,380 | 557,194 | \$2,864,157 | \$2,867,318 | φ40,000 |
| 790 | CORPORATION YARD | \$264,851 | \$34,695 | 20% | \$21,571 | 13% | \$13,124 | 238,440 | \$39,535 | \$28,353 | |
| 795 795 | GEN'L LIABILITY INS. | \$856,668 | \$92,901 | 24% | \$264.395 | 71% | (\$171,494) | 230,440 | \$685,174 | \$1,010,991 | |
| | | . , , , , , | | | V - 7 | | 1: , /1 | | . , | | |
| TOTAL IN | ITERNAL SERVICE FUNDS | <u>\$5,450,529</u> | <u>\$874,552</u> | <u>22%</u> | <u>\$894,986</u> | <u>22%</u> | <u>(\$20,434)</u> | | <u>\$4,197,438</u> | <u>\$5,506,582</u> | <u>\$40,000</u> |
| 820 | SPECIAL DEPOSITS | Т | | | 1 | | | T | | \$793,327 | |
| 841 | M.H. BUS.RANCH A.D. | \$1,649,856 | | n/a | \$984,117 | 136% | (\$984,117) | | \$665,739 | \$87,414 | \$578,324 |
| 842 | M.H. BUS. RANCH II A.D. | \$107,240 | | n/a | \$37,482 | 97% | (\$37,482) | | \$69,758 | \$10,245 | \$59,513 |
| 843 | M.H. BUS. RANCH 1998 | \$1,492,569 | \$335 | 2% | \$579,194 | 66% | (\$578,859) | | \$913,710 | \$28,702 | \$885,008 |
| 845 | MADRONE BP-TAX EXEMPT | \$1,312,253 | \$302 | 2 /0 | \$505,592 | 63% | (\$505,290) | | \$806,963 | \$8,620 | \$798,343 |
| 846 | MADRONE BP-TAXABLE | \$256,944 | \$58 | 2% | \$95,355 | 55% | (\$95,297) | | \$161,646 | \$7,509 | \$154,140 |
| 848 | TENNANT AVE.BUS.PK A.D. | \$360,919 | \$59,685 | 2% | ψ90,000 | na | \$59,685 | | \$420,604 | \$420,604 | ψ104,140 |
| 881 | POLICE DONATION TRUST FUND | \$20,938 | \$59,085 \$5 | 2% | | Πα | \$5 | | \$20,943 | Ψ-20,00- | \$20,943 |
| | GENCY FUNDS | | · | 1 | £0 004 740 | 0.40/ | · | | . , , | £4.250.404 | |
| IUIALA | GENCY FUNDS | <u>\$5,200,719</u> | <u>\$60,385</u> | <u>2%</u> | <u>\$2,201,740</u> | <u>84%</u> | <u>(\$2,141,355)</u> | | <u>\$3,059,363</u> | <u>\$1,356,421</u> | <u>\$2,496,271</u> |
| SUMMAR | RY BY FUND TYPE | | | | | | | | | | |
| | GENERAL FUND GROUP | \$11,136,505 | \$2,491,620 | 16% | \$3,509,390 | 21% | (\$1,017,770) | \$344,023 | \$9,774,712 | \$10,561,637 | \$4,150 |
| | SPECIAL REVENUE GROUP | \$6,911,827 | \$1,402,100 | 31% | \$1,290,791 | 14% | \$111,309 | \$1,996,329 | \$5,026,807 | \$6,351,077 | |
| | DEBT SERVICE GROUP | \$508,379 | | n/a | \$174,402 | 74% | (\$174,402) | | \$333,977 | \$135,778 | \$198,200 |
| | CAPITAL PROJECTS GROUP | \$68,236,786 | \$1,258,247 | 3% | \$12,906,479 | 19% | (\$11,648,232) | \$36,481,867 | \$20,106,686 | \$21,580,054 | \$14,566,477 |
| | ENTERPRISE GROUP | \$71,971,399 | \$5,875,915 | 39% | \$5,119,778 | 19% | \$756,137 | \$50,812,236 | \$21,915,298 | \$17,555,137 | \$7,664,092 |
| | INTERNAL SERVICE GROUP | \$5,450,529 | \$874,552 | 22% | \$894,986 | 22% | (\$20,434) | | \$4,197,438 | \$5,506,582 | \$40,000 |
| | AGENCY GROUP | \$5,200,719 | \$60,385 | 2% | \$2,201,740 | 84% | (\$2,141,355) | | \$3,059,363 | \$1,356,421 | \$2,496,271 |
| | TOTAL ALL GROUPS | <u>\$169,416,144</u> | <u>\$11,962,819</u> | <u>15%</u> | <u>\$26,097,566</u> | <u>20%</u> | (\$14,134,747) | <u>\$89,634,455</u> | <u>\$64,414,281</u> | \$63,046,686 | <u>\$24,969,190</u> |
| | TOTAL CASH AND INVESTMENTS | | | | | | | | | <u>\$88,015,876</u> | |

For Enterprise Funds - Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.



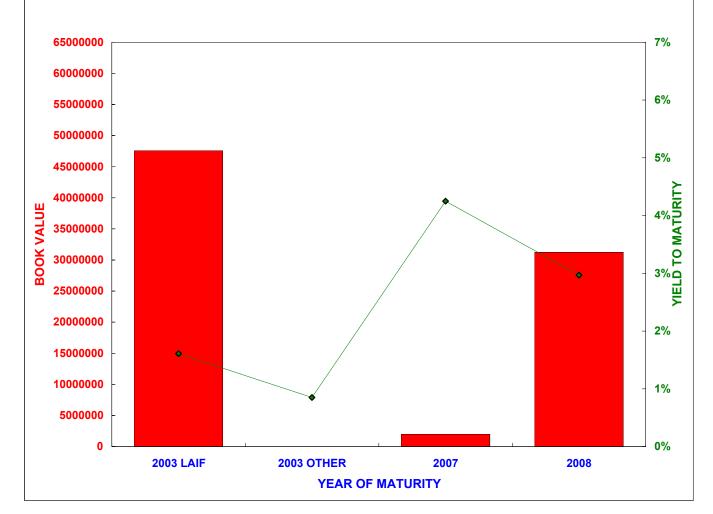
| Investment Type | | | % of Portfolio | Market Value | Stated Rate | Interest Earned | Next Call Date | Date of Maturity | Years to Maturity |
|--|----------|---|----------------|-------------------|----------------|--------------------|-------------------|---------------------|----------------------|
| LAIF* | | \$47,596,516 | 58.87% | \$47,731,989 | 1.610% | \$206,603 | | | 0.003 |
| SVNB CD | 07/07/03 | \$2,005,779 | 2.48% | \$2,005,779 | 1.700% | \$8,122 | | 07/07/05 | 1.767 |
| Fodoral Aganay Issues | | | | | | | | | |
| Federal Agency Issues Fed Home Loan Bank | 00/20/02 | #2.000.000 | 0.470/ | #2.000.200 | 4.0500/ | CO4 444 | | 00/00/07 | 2.000 |
| | 08/20/02 | \$2,000,000 | 2.47% | \$2,009,380 | 4.250% | \$21,441 | anytime | 08/20/07 | 3.888 |
| Fed Home Loan Bank | 02/04/03 | \$2,000,000 | 2.47% | \$2,008,120 | 3.900% | \$19,619 | anytime | 02/04/08 | 4.348 |
| Fed Home Loan Bank | 03/11/03 | \$2,000,000 | 2.47% | \$2,015,620 | 3.500% | \$17,542 | 03/11/04 | 03/11/08 | 4.447 |
| Fed Home Loan Mgt Corp | 03/12/03 | \$2,000,000 | 2.47% | \$2,017,860 | 3.500% | \$17,540 | 03/12/04 | 03/12/08 | 4.449 |
| Fed Home Loan Bank | 03/26/03 | \$2,000,000 | 2.47% | \$2,011,880 | 3.375% | \$16,885 | 03/26/04 | 03/26/08 | 4.488 |
| Fed Home Loan Mgt Corp | 04/08/03 | \$2,000,000 | 2.47% | \$2,023,760 | 3.700% | \$18,601 | 04/08/04 | 04/08/08 | 4.523 |
| Fed Home Loan Mgt Corp | 04/16/03 | \$2,000,000 | 2.47% | \$2,021,680 | 3.600% | \$18,098 | 04/16/04 | 04/16/08 | 4.545 |
| Fed Home Loan Mgt Corp | 04/17/03 | \$1,994,450 | 2.47% | \$2,002,180 | 3.691% | \$18,858 | 10/17/03 | 04/17/08 | 4.548 |
| Fed Farm Credit Bank | 05/14/03 | \$2,000,000 | 2.47% | \$2,006,260 | 3.617% | \$18,085 | anytime | 05/14/08 | 4.622 |
| Fed Farm Credit Bank | 06/03/03 | \$2,000,000 | 2.47% | \$2,003,760 | 3.210% | \$16,138 | 12/03/03 | 06/03/08 | 4.677 |
| Fed Farm Credit Bank | 06/12/03 | \$2,000,000 | 2.47% | \$1,987,500 | 2.950% | \$14,831 | 12/12/03 | 06/12/08 | 4.701 |
| Fed Home Loan Bank | 07/30/03 | \$2,000,000 | 2.47% | \$1,985,620 | 3.000% | \$10,272 | 01/30/04 | 07/30/08 | 4.833 |
| Fed Home Loan Bank | 07/30/03 | \$2,000,000 | 2.47% | \$1,998,120 | 3.243% | \$11,104 | 10/30/03 | 07/30/08 | 4.833 |
| Fed Home Loan Bank | 07/30/03 | \$2,000,000 | 2.47% | \$2,003,120 | 3.400% | \$11,641 | 10/30/03 | 07/30/08 | 4.833 |
| Fed Home Loan Bank | 08/04/03 | \$2,000,000 | 2.47% | \$2,011,880 | 3.650% | \$11,505 | 02/04/04 | 08/04/08 | 4.847 |
| Fed Home Loan Bank | 08/14/03 | \$1,250,000 | 1.55% | \$1,253,513 | 3.656% | \$5,961 | 11/14/03 | 08/14/08 | 4.874 |
| Redeemed FY 03/04 | | , ,, | | , ,,- | | \$15,091 | | | |
| Sub Total/Average | | \$31,244,450 | 38.65% | \$31,360,253 | 3.545% | \$263,212 | | | 4.584 |
| | | , | | , , , , , , , , , | | , | | | |
| Money Market | | \$818 | 0.00% | \$818 | 0.850% | \$6,091 | | | 0.003 |
| TOTAL/AVERAGE | = | \$80,847,563 | 100.00% | \$81,098,840 | 2.200% | \$484,028 | | | 1.816 |

^{*}Per State Treasurer Report dated 08/31/2003, LAIF had invested approximately 18% of its balance in Treasury Bills and Notes, 13% in CDs, 21% in Commercial Paper and Corporate Bonds, 0% in Banker's Acceptances and 48% in others.



CITY OF MORGAN HILL

INVESTMENT MATURITIES AS OF SEPTEMBER 30, 2003



| YEAR OF | BOOK | MARKET | AVERAGE | % OF |
|------------|--------------|--------------|---------|---------|
| MATURITY | VALUE | VALUE | RATE | TOTAL |
| 2003 LAIF | \$47,596,516 | \$47,731,989 | 1.610% | 58.87% |
| 2003 OTHER | \$818 | \$818 | 0.850% | 0.00% |
| 2007 | \$2,000,000 | \$2,009,380 | 4.250% | 2.47% |
| 2008 | \$31,250,230 | \$31,356,652 | 2.968% | 38.65% |
| TOTAL | \$80,847,564 | \$81,098,840 | 2.200% | 100.00% |



| FUND | ADODTED | AMENDED | CURRENT | 0/ | DDIOD | INCR (DECR) | 0/ |
|---|-------------------|-------------------|---------------|----------------|--------------|-------------------|---------------|
| REVENUE SOURCE | ADOPTED BUDGET | AMENDED BUDGET | YTD ACTUAL | % OF BUDGET | PRIOR YTD | FROM PRIOR YTD | % OF BUDGE |
| 010 GENERAL FUND | | | | | | | |
| TAVES | | | | | | | |
| TAXES Property Taxes - Secured/Unsecured/Prio | 1,972,200 | 1,972,200 | | n/a | 2,448 | (2,448) | -100% |
| Supplemental Roll | 200,000 | 200,000 | 18,306 | 9% | 14,205 | 4,101 | 29% |
| Sales Tax | 4,650,000 | 4,650,000 | 1,022,294 | 22% | 1,176,532 | (154,238) | |
| Public Safety Sales Tax | 273,000 | 273,000 | 45.951 | 17% | 51,337 | (5,386) | |
| Transient Occupancy Taxes | 890,000 | 890,000 | (2,945) | | 01,007 | (2,945) | |
| Franchise (Refuse ,Cable ,PG&E) | 961,180 | 961,180 | (2,040) | n/a | | (2,040) | n/a |
| Property Transfer Tax | 267,800 | 267,800 | 38,676 | 14% | 45,809 | (7,133) | |
| TOTAL TAXES | 9,214,180 | 9,214,180 | 1,122,282 | 12% | 1,290,331 | (168,049) | |
| LICENSES/PERMITS | | | | | | | |
| Business License | 154,500 | 154,500 | 129,160 | 84% | 134,585 | (5,425) | -4% |
| Other Permits | 48,100 | 48,100 | 995 | <u>2%</u> | 166 | 829 | 499% |
| TOTAL LICENSES/PERMITS | 202,600 | 202,600 | 130,155 | 64% | 134,751 | (4,596) | -3% |
| FINES AND PENALTIES | | | | | | | |
| Parking Enforcement | 13,400 | 13,400 | 3,601 | 27% | 845 | 2,756 | 326% |
| City Code Enforcement | 77,300 | 77,300 | 4,899 | 6% | 6,882 | (1,983) | |
| Business tax late fee/other fines | 2,600 | 2,600 | | <u>n/a</u> | 1,043 | (1,043) | <u>-100%</u> |
| TOTAL FINES AND PENALTIES | 93,300 | 93,300 | 8,500 | 9% | 8,770 | (270) | |
| OTHER AGENCIES | | | | | | | |
| Motor Vehicle in-Lieu | 2,080,000 | 2,080,000 | 257,298 | 12% | 547,432 | (290,134) | -53% |
| Other Revenue - Other Agencies | 271,900 | 271,900 | 888 | <u>0%</u> | 3,658 | (2,770) | |
| TOTAL OTHER AGENCIES | 2,351,900 | 2,351,900 | 258,186 | 11% | 551,090 | (292,904) | |
| CHARGES CURRENT SERVICES | | | | | | | |
| False Alarm Charge | 24,700 | 24,700 | (476) | -2% | (946) | 470 | -50% |
| Business License Application Review | 20,900 | 20,900 | 8,141 | 39% | 6,305 | 1,836 | 29% |
| Recreation Classes | 338,784 | 338,784 | 58,605 | 17% | 16,486 | 42,119 | 255% |
| General Administration Overhead | 2,007,978 | 2,007,978 | 501,995 | 25% | 463,984 | 38,011 | 8% |
| Other Charges Current Services | 195,775 | 195,775 | 51,698 | 26% | 18,217 | 33,481 | <u>184%</u> |
| TOTAL CURRENT SERVICES | 2,588,137 | 2,588,137 | 619,963 | 24% | 504,046 | 115,917 | 23% |
| OTHER REVENUE | | | | | | | |
| Use of money/property | 775,550 | 775,550 | 139,582 | 18% | 46,450 | 93,132 | 200% |
| Other revenues | 24,200 | 24,200 | 7,952 | <u>33%</u> | 4,552 | 3,400 | <u>75%</u> |
| TOTAL OTHER REVENUE | 799,750 | 799,750 | 147,534 | 18% | 51,002 | 96,532 | 189% |
| FRANSFERS IN | | | | | | | |
| Park Maintenance | 200,000 | 200,000 | 50,000 | 25% | - | 50,000 | n/a |
| Sewer Enterprise | 17,500 | 17,500 | 4,375 | 25% | 4,375 | - | n/a |
| Water Enterprise | 17,500 | 17,500 | 4,375 | 25% | 4,375 | - | n/a |
| Public Safety | 273,000 | 273,000 | 68,250 | 25% | - | 68,250 | n/a |
| Community Cultural Center | 312,000 | 312,000 | 78,000 | 25% | - | 78,000 | n/a |
| Other Funds | 3,986 | 3,986 | | <u>n/a</u> | | | <u>n/a</u> |
| TOTAL TRANSFERS IN | 823,986 | 823,986 | 205,000 | 25% | 8,750 | 196,250 | 2243% |
| | | | | | | | |



| FUND REVENUE | ADOPTED | AMENDED | CURRENT YTD | % | PRIOR | INCR (DECR) FROM PRIOR | % |
|--|-----------|-----------|----------------|-------------|-----------|---------------------------|---------------|
| SOURCE SPECIAL REVENUE FUNDS | BUDGET | BUDGET | ACTUAL | OF BUDGET | YTD | YTD | OF BUDGE |
| SPECIAL REVENUE FUNDS | | | | | | | |
| 202 STREET MAINTENANCE | | | | | | | |
| Gas Tax 2105 - 2107.5 | 653,400 | 653,400 | 180,232 | 28% | 130,718 | 49,514 | 38% |
| Measure A & B | - | - | - | n/a | - | - | n/a |
| Tea 21 | - | - | - | n/a | - | - | n/a |
| Transfers In | 700,000 | 700,000 | 175,000 | 25% | 150,000 | 25,000 | 17% |
| Project Reimbursement | | - | | n/a | - | - | n/a |
| Interest / Other Revenue/Other Charges | 14,861 | 14,861 | 107,202 | <u>721%</u> | 242 | 106,960 | <u>44198%</u> |
| 202 STREET MAINTENANCE | 1,368,261 | 1,368,261 | 462,434 | 34% | 280,960 | 181,474 | 65% |
| 204/205 PUBLIC SAFETY TRUST | | | | | | | |
| Interest Income | 9,956 | 9,956 | - | n/a | - | - | n/a |
| Police Grant/SLEF | 100,000 | 100,000 | - | n/a | - | - | n/a |
| PD Block Grant | - | - | - | n/a | - | - | n/a |
| CA Law Enforcement Equip.Grant | - | _ | - | n/a | - | - | n/a |
| Federal Police Grant (COPS) | - | - | - | n/a | - | - | n/a |
| Transfers In | | <u>-</u> | | <u>n/a</u> | | | n/a |
| 204/205 PUBLIC SAFETY TRUST | 109,956 | 109,956 | - | n/a | - | - | n/a |
| 206 COMMUNITY DEVELOPMENT | | | | | | | |
| Building Fees | 1,100,500 | 1,100,500 | 591,988 | 54% | 312,425 | 279,563 | 89% |
| Planning Fees | 616,496 | 616,496 | 151,373 | 25% | 95,652 | 55,721 | 58% |
| Engineering Fees | 519,600 | 519,600 | 58,768 | 11% | 172,415 | (113,647) | -66% |
| Other Revenue/Current Charges | 9,763 | 9,763 | 694 | 7% | 337 | 357 | 106% |
| Transfers | 30,000 | 30,000 | 7,500 | <u>25%</u> | _ | 7,500 | n/a |
| 206 COMMUNITY DEVELOPMENT | 2,276,359 | 2,276,359 | 810,323 | 36% | 580,829 | 229,494 | 40% |
| 207 GENERAL PLAN UPDATE | 76,087 | 76,087 | 22,850 | 30% | 28,666 | (5,816) | -20% |
| 215 and 216 HCD BLOCK GRANT | | | | | | | |
| HCD allocation | 152,000 | 152,000 | | n/a | _ | _ | n/a |
| Interest Income/Other Revenue | 3,900 | 3,900 | 5,509 | 141% | 115 | 5,394 | 4690% |
| Transfers | 782 | 782 | - | n/a | _ | - | n/a |
| 215 and 216 HCD BLOCK GRANT | 156,682 | 156,682 | 5,509 | 4% | 115 | 5,394 | 4690% |
| 10 COMMUNITY CENTER | 6,198 | 6,198 | | n/a | 100,000 | (100,000) | -100% |
| 220 MUSEUM RENTAL | 41 | 41 | | n/a | - | , , | n/a |
| 225 ASSET SEIZURE | 583 | 583 | | n/a | - | _ | n/a |
| 226 OES/FEMA | - | - | _ | n/a | _ | _ | n/a |
| 229 LIGHTING AND LANDSCAPE | 127,770 | 127,770 | | n/a | - | - | n/a |
| 232 ENVIRONMENTAL PROGRAMS | 387,209 | 387,209 | 91,559 | 24% | 32,009 | 59,550 | 186% |
| 234 MOBILE HOME PARK RENT STAB. | 6,298 | 6,298 | 3,024 | 48% | 3,600 | (576) | |
| 235 SENIOR HOUSING | 6,897 | 6,897 | -, | n/a | - | - | n/a |
| 236 HOUSING MITIGATION | 27,775 | 27,775 | | n/a | _ | - | n/a |
| 240 EMPLOYEE ASSISTANCE | 20,162 | 20,162 | 6,401 | 32% | 40,000 | (33,599) | |
| TOTAL SPECIAL REVENUE FUNDS | 4,570,278 | 4,570,278 | 1,402,100 | 31% | 1,066,179 | 335,921 | 32% |



| CITI OF MOROACTINES | 25 % Of Teal Co | inpieteu | | | | | |
|------------------------------------|-----------------|------------|-----------|-------------|---------|-------------|------------|
| FUND | | | CURRENT | | | INCR (DECR) | |
| REVENUE | ADOPTED | AMENDED | YTD | % | PRIOR | FROM PRIOR | % |
| SOURCE | BUDGET | BUDGET | ACTUAL | OF BUDGET | YTD | YTD | OF BUDGET |
| CAPITAL PROJECTS FUNDS | I | | | | | | |
| 301 PARK DEVELOPMENT | 435,072 | 435,072 | 267,542 | 61% | 92,237 | 175,305 | 190% |
| 302 PARK MAINTENANCE | 257,923 | 257,923 | 39,205 | 15% | 95,053 | (55,848) | |
| 303 LOCAL DRAINAGE | 291,028 | 291,028 | 46,800 | 16% | 47,388 | (588) | |
| 304 LOCAL DRAINAGE/NON AB1600 | 157,378 | 157,378 | 36,000 | 23% | 38,000 | (2,000) | |
| 305 OFF-STREET PARKING | 95 | 95 | 00,000 | n/a | - | (=,000) | n/a |
| 306 OPEN SPACE | 57,428 | 57,428 | | n/a | _ | _ | n/a |
| 309 TRAFFIC MITIGATION | 662,507 | 662,507 | 522,929 | 79% | 116,833 | 406,096 | 348% |
| 311 POLICE MITIGATION | 51,569 | 51,569 | 21,629 | 42% | 6,829 | 14,800 | 217% |
| 313 FIRE MITIGATION | 147,884 | 147,884 | 77,770 | 53% | 30,716 | 47,054 | 153% |
| 317 RDA CAPITAL PROJECTS | | | | | | | |
| Property Taxes & Supplemental Roll | 14,086,573 | 14,086,573 | 103,617 | 1% | 256,849 | (153,232) | -60% |
| Development Agreements | | | - | n/a | - | - | n/a |
| Interest Income, Rents | | | 2,977 | n/a | 34,232 | (31,255) | -91% |
| Other Agencies/Current Charges | 9,450,000 | 9,450,000 | 2,631 | 0% | 3,550 | (919) | -26% |
| 317 RDA CAPITAL PROJECTS | 23,536,573 | 23,536,573 | 109,225 | 0% | 294,631 | (185,406) | -63% |
| 327/328 RDA L/M HOUSING | | | | | | | |
| Property Taxes & Supplemental Roll | 3,791,085 | 3,791,085 | 25,904 | 1% | 3,820 | 22,084 | 578% |
| Interest Income, Rent | 45,364 | 45,364 | 28,939 | 64% | 12,028 | 16,911 | 141% |
| <u>Other</u> | 90 | 90 | 531 | <u>590%</u> | 420 | 111 | <u>26%</u> |
| 327/328 RDA L/M HOUSING | 3,836,539 | 3,836,539 | 55,374 | 1% | 16,268 | 39,106 | 240% |
| 346 PUBLIC FACILITIES NON-AB1600 | 9,875,877 | 9,875,877 | 24,000 | 0% | 38,000 | (14,000) | -37% |
| 347 PUBLIC FACILITIES | 46,900 | 46,900 | 33,654 | 72% | 11,784 | 21,870 | 186% |
| 348 LIBRARY | 30,782 | 30,782 | 23,505 | 76% | 8,335 | 15,170 | 182% |
| 350 UNDERGROUNDING | 31,495 | 31,495 | | n/a | - | - | n/a |
| 340 MORGAN HILL BUS.RANCH CIP I | 1,144 | 1,144 | | n/a | - | - | n/a |
| 342 MORGAN HILL BUS.RANCH CIP II | 1,282 | 1,282 | | n/a | - | - | n/a |
| 360 COMMUNITY/REC IMPACT FUND | | | 307 | n/a | - | 307 | n/a |
| TOTAL CAPITAL PROJECTS FUNDS | 39,421,476 | 39,421,476 | 1,257,940 | 3% | 796,074 | 461,866 | 58% |
| DEBT SERVICE FUNDS | | | | | | | |
| | - | | | , | | | - |
| 527 HIDDEN CREEK | - | - | - | n/a | - | - | n/a |
| 533 DUNNE AVE. / CONDIT ROAD | - | | - | n/a | - | - | n/a |
| 536 ENCINO HILLS | 1,631 | 1,631 | | n/a | - | - | n/a |
| 539 MORGAN HILL BUSINESS PARK | 447 | 447 | | n/a | - | - | n/a |
| 542 SUTTER BUSINESS PARK | 730 | 730 | | n/a | - | - | n/a |
| 545 COCHRANE BUSINESS PARK | 119,887 | 119,887 | | n/a | - | - | n/a |
| 551 JOLEEN WAY | 34,955 | 34,955 | | n/a | - | - | n/a |
| TOTAL DEBT SERVICE FUNDS | 157,650 | 157,650 | - | n/a | - | - | n/a |



| CITT OF MORGAN HILL | 25% of Year Co | mpietea | | | | | |
|--|-----------------------------|-----------------------------|----------------------------|-------------------|---------------------|---------------------|--------------------------|
| FUND | | | CURRENT | 0.4 | | INCR (DECR) | 0.4 |
| REVENUE SOURCE | ADOPTED BUDGET | AMENDED BUDGET | YTD ACTUAL | % OF BUDGET | PRIOR YTD | FROM PRIOR YTD | % OF BUDGE |
| ENTERPRISE FUNDS | BODGET | DODGET | AOTOAL | OI BODOLI | 110 | 110 | OI BODGE |
| | | | | | | | |
| 640 SEWER OPERATION | 5 004 400 | 5 004 400 | 4 050 007 | 050/ | 4 474 000 | (100.011) | 00/ |
| Sewer Service Fees | 5,321,460 | 5,321,460 | 1,350,967 | 25% | 1,471,908 | (120,941) | |
| Interest Income | 51,960 | 51,960 | - | n/a | - | - | n/a |
| Sewer Rate Stabilization | - | - | - | n/a | - | - | n/a |
| Other Revenue/Current Charges 640 SEWER OPERATION | 113,950 5,487,370 | 113,950 5,487,370 | 39,299 1,390,266 | 34% 25% | 22,587 1,494,495 | 16,712 (104,229) | <u>74%</u> -7% |
| 641 SEWER EXPANSION | | | | | | | |
| Interest Income | 26,580 | 26,580 | | n/a | 37 | (37) | -100% |
| Connection Fees | 600,000 | 600,000 | 835,189 | 139% | 140,754 | 694,435 | 493% |
| Other | - | - | 198 | <u>n/a</u> | 198 | - | n/a |
| 641 SEWER EXPANSION | 626,580 | 626,580 | 835,387 | 133% | 140,989 | 694,398 | 493% |
| 642 SEWER RATE STABILIZATION | 89,558 | 89,558 | | n/a | _ | _ | n/a |
| 042 SEWER RATE STABILIZATION | - | - | | 11/4 | | _ | II/a |
| 643 SEWER-CAPITAL PROJECT | 525,416 | 525,416 | 125,000 | 24% | - | 125,000 | n/a |
| TOTAL SEWER FUNDS | 6,728,924 | 6,728,924 | 2,350,653 | 35% | 1,635,484 | 715,169 | 44% |
| | | | | | | | |
| 650 WATER OPERATION | | | | | | | |
| Water Sales | 5,738,350 | 5,738,350 | 2,398,628 | 42% | 2,289,041 | 109,587 | 5% |
| Meter Install & Service | 40,000 | 40,000 | 17,830 | 45% | 9,350 | 8,480 | 91% |
| Transfers-In, and Interest Income | 1,045,785 | 1,045,785 | 265,621 | 25% | 47,497 | 218,124 | 459% |
| Other Revenue/Current Charges | 249,584 | 249,584 | 550,815 | <u>221%</u> | 40,484 | 510,331 | <u>1261%</u> |
| 650 WATER OPERATION | 7,073,719 | 7,073,719 | 3,232,894 | 46% | 2,386,372 | 846,522 | 35% |
| CEA WATER EVRANCION | | | | | | | |
| 651 WATER EXPANSION Interest Income/Other Revenue/Transfer | 501,803 | 501,803 | 155,591 | 31% | 3,324 | 152,267 | 4581% |
| Water Connection Fees | 160,000 | 160,000 | 136,777 | 85% | 26,103 | 110,674 | 424% |
| 651 WATER EXPANSION | 661,803 | 661,803 | 292,368 | 44% | 29,427 | 262,941 | 894% |
| 652 Water Rate Stabilization | 20,517 | 20,517 | | n/a | _ | _ | n/a |
| | • | · | | | | | |
| 653 Water Capital Project | 402,395 | 402,395 | | n/a | - | - | n/a |
| TOTAL WATER FUNDS | 8,158,434 | 8,158,434 | 3,525,262 | 43% | 2,415,799 | 1,109,463 | 46% |
| TOTAL ENTERPRISE FUNDS | 14,887,358 | 14,887,358 | 5,875,915 | 39% | 4,051,283 | 1,824,632 | 45% |
| INTERNAL SERVICE FUNDS | | | | | | | |
| | | | | | | | / |
| 730 INFORMATION SERVICES | 245,262 | 245,262 | 61,315 | | 95,297 | (33,982) | |
| 740 BUILDING MAINTENANCE SERVICES | 891,042 | 891,042 | 224,213 | | 209,315 | 14,898 | 7% |
| 745 CIP ADMINISTRATION | 1,447,120 | 1,447,120 | 294,343 | | 248,520 | 45,823 | 18% |
| 760 UNEMPLOYMENT INSURANCE | 29,452 | 29,452 | 7,363 | | | 7,363 | n/a |
| 770 WORKERS COMPENSATION | 687,700 | 687,700 | 108,785 | | 103,131 | 5,654 | 5% |
| 790 EQUIPMENT REPLACEMENT | 198,367 | 198,367 | 50,937 | | 124,387 | (73,450) | |
| 793 CORPORATION YARD COMMISSION | 160,005 | 160,005 | 34,695 | | 822,934 | (788,239) | |
| 795 GENERAL LIABILITY INSURANCE | 389,927 | 389,927 | 92,901 | 24% | 88,749 | 4,152 | 5% |
| TOTAL INTERNAL SERVICE FUNDS | 4,048,875 | 4,048,875 | 874,552 | 22% | 1,692,333 | (817,781) | -48% |
| | | | | | | | |



| | | • | | | | | |
|--------------------------------|------------|------------|------------|-----------|------------|-------------|-----------|
| FUND | | | CURRENT | | | INCR (DECR) | |
| REVENUE | ADOPTED | AMENDED | YTD | % | PRIOR | FROM PRIOR | % |
| SOURCE | BUDGET | BUDGET | ACTUAL | OF BUDGET | YTD | YTD | OF BUDGET |
| AGENCY FUNDS | | | | | | | |
| 841 M.H. BUS.RANCH A.D. I | 736,175 | 736,175 | | n/a | - | - | n/a |
| 842 M.H. BUS.RANCH A.D. II | 37,177 | 37,177 | | n/a | - | - | n/a |
| 843 M.H. BUS.RANCH 1998 | 883,205 | 883,205 | 335 | 0% | - | 335 | n/a |
| 845 MADRONE BP-TAX EXEMPT | 807,439 | 807,439 | 302 | 0% | - | 302 | n/a |
| 846 MADRONE BP-TAXABLE | 167,254 | 167,254 | 58 | 0% | - | 58 | n/a |
| 848 TENNANT AVE.BUS.PK A.D. | 39,523 | 39,523 | 59,685 | 151% | - | 59,685 | n/a |
| 881 POLICE DONATION TRUST FUND | 245 | 245 | 5 | 2% | - | 5 | n/a |
| TOTAL AGENCY FUNDS | 2,671,018 | 2,671,018 | 60,385 | 2% | - | 60,385 | n/a |
| TOTAL FOR ALL FUNDS | 81,830,508 | 81,830,508 | 11,962,512 | 15% | 10,154,609 | 2,043,565 | 20% |



| NO. FUND/ACTIVITY ACTUAL ADOPTED AMENDED YTD OUTSTANDING TOTAL TO | | | THIS | | | | | | |
|---|------|---------------|----------|---------|---------|-----------------|--------------------|-----------|-----------|
| | FUND | | MONTH | | | | | | PERCENT O |
| EVENUES BUDGET BUDGET EVENUES ENCUMPRANCE ALLOCATED BU | NO. | FUND/ACTIVITY | ACTUAL | ADOPTED | AMENDED | YTD | OUTSTANDING | TOTAL | TOTAL TO |
| EXPENSES BUDGET BUDGET EXPENSES ENCUMBRANCE ALLOCATED BU | | | EXPENSES | BUDGET | BUDGET | EXPENSES | ENCUMBRANCE | ALLOCATED | BUDGET |

| 010 GENERAL FUND | | | | | | | |
|--|------------------------|---------------------------|---------------------------|--------------------------|-------------------------|--------------------------|--------------------------|
| I. GENERAL GOVERNMENT | | | | | | | |
| COUNCIL AND MISCELLANEOUS GOVT. | | | | | | | |
| City Council | 18,893 | 194,400 | 194,400 | 57,023 | 16,957 | 73,980 | 38% |
| Community Promotions | 2,242 | 31,542 | 31,542 | 4,410 | 715 | 5,125 | <u>16%</u> |
| COUNCIL AND MISCELLANEOUS GO | 21,135 | 225,942 | 225,942 | 61,433 | 17,672 | 79,105 | 35% |
| CITY ATTORNEY | 41,466 | 615,917 | 615,917 | 111,167 | 72,985 | 184,152 | <u>30%</u> |
| CITY MANAGER | | | | | | | |
| City Manager | 26,847 | 391,162 | 391,162 | 88,202 | 404 | 88,606 | 23% |
| Cable Television | 9,646 | 45,236 | 46,986 | 14,833 | 23,016 | 37,849 | 81% |
| Communications & Marketing CITY MANAGER | 9,271 45,764 | 106,576 542,974 | 106,576 544,724 | 20,233 123,268 | 27,276 50,696 | 47,509 173,964 | <u>45%</u> 32% |
| CITI MANAGER | 45,704 | 342,374 | 344,724 | 123,200 | 30,030 | 173,904 | J2 /0 |
| RECREATION | | | | | | | |
| Recreation | 27,535 | 455,503 | 463,468 | 96,368 | 7,245 | 103,613 | 22% |
| Community & Cultural Center | 54,351 | 739,223 | 766,023 273.890 | 127,846 | 77,032 | 204,878 | 27% 2% |
| Aquatics Center Building Maintenance (CCC) | 4,977 36,165 | 273,890 416,108 | 427,967 | 4,977 95,691 | 49,464 | 4,977 145,155 | 2% 34% |
| RECREATION | 123,028 | 1,884,724 | 1,931,348 | 324,882 | 133,741 | 458,623 | 24% |
| | , | 1,000,1,000 | 1,001,010 | | ,. | , | |
| HUMAN RESOURCES | 50.047 | 500.007 | 500 00 7 | 107.004 | | 407.004 | 0.40/ |
| Human Resources Volunteer Programs | 58,017 | 582,687 34,442 | 582,687 | 137,084 5,581 | - | 137,084 | 24% |
| HUMAN RESOURCES | 1,984 60,001 | 617,129 | 34,442 617,129 | 142,665 | | 5,581 142,665 | <u>16%</u> 23% |
| Homan Redounded | 00,001 | 011,123 | 017,120 | 142,000 | _ | 142,000 | 20 /0 |
| CITY CLERK | | | | | | | |
| City Clerk | 17,008 | 302,672 | 303,533 | 55,991 | 861 | 56,852 | 19% |
| Elections | 2,886 | 70,576 | 70,576 | 8,920 | <u>-</u> . | 8,920 | <u>13%</u> |
| CITY CLERK | 19,894 | 373,248 | 374,109 | 64,911 | 861 | 65,772 | 18% |
| FINANCE | 67,263 | 889,208 | 891,223 | 202,591 | 7,056 | 209,647 | 24% |
| MEDICAL SERVICES | - | | 5,000 | | 5,000 | 5,000 | n/a |
| TOTAL GENERAL GOVERNMENT | 378,551 | 5,149,142 | 5,205,392 | 1,030,917 | 288,011 | 1,318,928 | 25% |
| II. PUBLIC SAFETY | | | | | | | |
| POLICE | | | | | | | |
| POLICE PD Administration | 34,165 | 491,711 | 491,711 | 100,976 | | 100,976 | 21% |
| Patrol | 228,479 | 3,207,070 | 3,274,188 | 681,219 | 15,895 | 697,114 | 21% |
| Support Services | 57,183 | 897,092 | 897,092 | 177,763 | 10,168 | 187,931 | 21% |
| Emergency Services/Haz Mat | 1,643 | 33,858 | 33,858 | 12,115 | 4,013 | 16,128 | 48% |
| Special Operations | 83,998 | 1,176,399 | 1,179,974 | 240,688 | 5,327 | 246,015 | 21% |
| Animal Control | 6,126 | 76,159 | 76,159 | 16,663 | - | 16,663 | 22% |
| Dispatch Services | 57,257 | 858,218 | 859,318 | 184,682 | 1,100 | 185,782 | 22% |
| POLICE | 468,851 | 6,740,507 | 6,812,300 | 1,414,106 | 36,503 | 1,450,609 | 21% |
| FIRE | 312,081 | 3,745,220 | 3,745,220 | 936,244 | - | 936,244 | 25% |
| TOTAL PUBLIC SAFETY | 780,932 | 10,485,727 | 10,557,520 | 2,350,350 | 36,503 | 2,386,853 | 23% |
| | | | | | | | |
| III. COMMUNITY IMPROVEMENT | | | | | | | |
| PARK MAINTENANCE | 41,489 | 810,323 | 822,840 | 128,123 | 19,509 | 147,632 | 18% |
| TOTAL COMMUNITY IMPROVEMENT | 41,489 | 810,323 | 822,840 | 128,123 | 19,509 | 147,632 | 18% |



| | CITI OF MORGAN TILL | | 25% Of Year | completed | | | | |
|-------------|--|-------------------------------------|-------------------|---------------------|-------------------|----------------------------|--------------------------|----------------------------------|
| FUND NO. | FUND/ACTIVITY | THIS MONTH ACTUAL EXPENSES | ADOPTED BUDGET | AMENDED BUDGET | YTD EXPENSES | OUTSTANDING ENCUMBRANCE | TOTAL ALLOCATED | PERCENT OF TOTAL TO BUDGET |
| IV. TRA | NSFERS | | | | | | | |
| | | | | | | | | |
| | Street Maintenance Community Center | | | | | - | - | n/a n/a |
| | General Plan Update | | | | | - | - | <u>n/a</u> |
| TO | OTAL TRANSFERS | - | - | - | - | - | - | n/a |
| TOTAL O | GENERAL FUND | 1,200,972 | 16,445,192 | 16,585,752 | 3,509,390 | 344,023 | 3,853,413 | 23% |
| SPECIAL | L REVENUE FUNDS | | | | | | | |
| | | | | | | | | |
| 202 STR | EET MAINTENANCE | 70 407 | 1 500 700 | 1 670 000 | 222.007 | 400.074 | 200 044 | 240/ |
| | Street Maintenance/Traffic | 70,437 | 1,533,793 | 1,672,928 | 232,667 10.545 | 163,974 | 396,641 | 24% |
| | Congestion Management Street CIP | 3,576 22,261 | 78,868 514,800 | 78,868 1,111,206 | 83,531 | 642,076 | 10,545 <u>725,607</u> | 13% <u>65%</u> |
| 202 STR | EET MAINTENANCE | 96,274 | 2,127,461 | 2,863,002 | 326,743 | 806,050 | 1,132,793 | 40% |
| 204/205 | PUBLIC SAFETY/SUPP.LAW | 22,799 | 273,582 | 273,582 | 68,396 | | 68,396 | 25% |
| 206 COI | MMUNITY DEVELOPMENT FUND | | | | | | | |
| | Planning | 81.703 | 979,437 | 1,129,767 | 245,794 | 243,221 | 489,015 | 43% |
| | Building | 58,517 | 956,070 | 1,016,487 | 185,986 | 54,915 | 240,901 | 24% |
| | PW-Engineering | 76,977 | 1,029,375 | 1,072,275 | 209,269 | 176,650 | 385,919 | <u>36%</u> |
| 206 CO | MMUNITY DEVELOPMENT FUND | 217,197 | 2,964,882 | 3,218,529 | 641,049 | 474,786 | 1,115,835 | 35% |
| 207 | GENERAL PLAN UPDATE | 1,822 | 71,257 | 197,413 | 4,889 | 126,156 | 131,045 | 66% |
| 210 | COMMUNITY CENTER | 26,000 | 312,000 | 312,000 | 78,000 | - | 78,000 | 25% |
| 215/216 | CDBG | 3,032 | 195,769 | 385,942 | 6,097 | 2,492 | 8,589 | 2% |
| 220 | MUSEUM RENTAL | 174 | 2,422 | 2,422 | 479 | - | 479 | 20% |
| 225 | ASSET SEIZURE | | | | | - | - | n/a |
| 226 | OES/FEMA | - | - | - | - | - | - | n/a |
| 229 | LIGHTING AND LANDSCAPE | 13,344 | 154,755 | 167,001 | 36,710 | 10,779 | 47,489 | 28% |
| 232 | ENVIRONMENT PROGRAMS | 49,562 | 452,029 | 499,894 | 81,715 | 102,570 | 184,285 | 37% |
| 234 | MOBILE HOME PARK | 26,337 | 39,661 | 39,661 | 37,213 | 24,901 | 62,114 | 157% |
| 235 | SENIOR HOUSING TRUST FUN | - | 14,300 | 14,300 | - | - | - | n/a |
| 236 | HOUSING MITIGATION FUND | - | 1,033,497 | 1,033,497 | - | - | - | n/a |
| 240 | EMPLOYEE ASSISTANCE | 2,000 | 20,000 | 20,000 | 9,500 | - | 9,500 | 48% |
| TOTAL S | SPECIAL REVENUE FUNDS | 458,541 | 7,661,615 | 9,027,243 | 1,290,791 | 1,547,734 | 2,838,525 | 31% |
| CAPITAL | L PROJECT FUNDS | | | | | | | |
| 301 | PARK DEVELOPMENT | 11,057 | 1,570,296 | 2,192,254 | 27,762 | 109,082 | 136,844 | 6% |
| 302 | PARK MAINTENANCE | 50,000 | 200,000 | 200,000 | 50,000 | 109,002 | 50,000 | 25% |
| 303 | LOCAL DRAINAGE | 143 | 2,028,393 | 2,261,893 | 5,519 | - | 5,519 | 0% |
| 304 | LOCAL DRAIN. NON-AB1600 | 2,656 | 191,868 | 191,868 | 7,967 | - | 7,967 | 4% |
| 305 | OFF STREET PARKING | _,005 | 3,986 | 3,986 | - ,007 | - | - ,007 | n/a |
| 309 | TRAFFIC MITIGATION | 6,077 | 936,333 | 1,720,135 | 20,561 | 549,428 | 569,989 | 33% |
| 311 | POLICE MITIGATION | 10,554 | 1,206,645 | 1,226,645 | 11,661 | 10,000 | 21,661 | 2% |
| 313 | FIRE MITIGATION | 129 | 401,545 | 401,545 | 386 | , - | 386 | 0% |
| 317 | RDA BUSINESS ASSISTANCE | 408,995 | 27,346,151 | 39,964,614 | 9,359,987 | 14,599,527 | 23,959,514 | 60% |
| 327/328 | RDA HOUSING | 96,775 | 4,592,332 | 8,538,767 | 3,315,584 | 40,739 | 3,356,323 | 39% |
| 346 | PUBLIC FAC.NON AB1600 | 180 | 9,808,000 | 9,808,000 | 583 | - | 583 | 0% |
| 347 | PUBLIC FACILITIES | 7,138 | 831,229 | 1,780,763 | 106,304 | 872,720 | 979,024 | 55% |
| 348 | LIBRARY IMPACT | 19 | 225 | 225 | 56 | - | 56 | 25% |
| 350 | UNDERGROUNDING | 36 | 190,437 | 190,437 | 109 | - | 109 | 0% |
| TOTAL O | CAPITAL PROJECTS FUNDS | 593,759 | 49,307,440 | 68,481,132 | 12,906,479 | 16,181,496 | 29,087,975 | 42% |
| | | | | | | | | |



| | | | 20/0 OI I Cai | Completed | | | | |
|-------------|---|-------------------------------------|---|---|---------------------|----------------------------|----------------------|----------------------------------|
| FUND NO. | FUND/ACTIVITY | THIS MONTH ACTUAL EXPENSES | ADOPTED BUDGET | AMENDED BUDGET | YTD EXPENSES | OUTSTANDING ENCUMBRANCE | TOTAL | PERCENT OF TOTAL TO BUDGET |
| | | EXI ENOLO | DODOLI | DODOLI | EXI ENOLO | ENCOMBICATOR | ALLOGATED | DODGET |
| DEBT SI | ERVICE FUNDS | | | | | | | |
| 527 | HIDDEN CREEK A.D. | - | - | - | - | - | - | n/a |
| 536 | ENCINO HILLS A.D. | - | - | - | - | - | - | n/a |
| 539 | MORGAN HILL BUS. PARK A.D | - | - | - | - | - | - | n/a |
| 542 | SUTTER BUS. PARK A.D. | - | - | - | - | - | - | n/a |
| 545 551 | COCHRANE BUS. PARK A.D. JOLEEN WAY A.D. | 802 | 195,805 | 195,805 | 145,225 | - | 145,225 | 74% |
| 551 | JOLEEN WAT A.D. | 27,774 | 40,540 | 40,540 | 29,177 | - | 29,177 | 72% |
| TOTAL I | DEBT SERVICE FUNDS | 28,576 | 236,345 | 236,345 | 174,402 | - | 174,402 | 74% |
| ENTERP | PRISE FUNDS | | | | | | | |
| SEWER | | | | | | | | |
| 640 | SEWER OPERATION | 293,519 | 7,418,125 | 7,513,797 | 2,679,951 | 109,500 | 2,789,451 | 37% |
| 641 | CAPITAL EXPANSION | 2,043 | 3,576,249 | 3,697,697 | 147,232 | 154,878 | 302,110 | 8% |
| 642 | SEWER RATE STABILIZATION | 197 | 2,369 | 2,369 | 592 | . , | 592 | 25% |
| 643 | SEWER-CAPITAL PROJECTS | 83,884 | 437,843 | 1,616,022 | 240,396 | 173,246 | 413,642 | <u>26%</u> |
| TOTAL | SEWER FUND(S) | 379,643 | 11,434,586 | 12,829,885 | 3,068,171 | 437,624 | 3,505,795 | 27% |
| WATER | | | | | | | | |
| | Water Operations Division | 620,119 | 6,213,247 | 6,738,996 | 1,456,173 | 461,321 | 1,917,494 | 28% |
| | Meter Reading/Repair | 25,782 | 637,156 | 669,538 | 97,995 | 261,946 | 359,941 | 54% |
| | Utility Billing | 39,482 | 391,570 | 394,863 | 86,002 | 20,991 | 106,993 | 27% |
| | Water Conservation | 104 | 8,213 | 8,213 | 307 | | 307 | <u>4%</u> |
| 650 | WATER OPERATIONS | 685,487 | 7,250,186 | 7,811,610 | 1,640,477 | 744,258 | 2,384,735 | 31% |
| 651 | CAPITAL EXPANSION | 90,827 | 1,546,253 | 2,652,299 | 177,485 | 897,322 | 1,074,807 | 41% |
| 652 653 | WATER CARITAL PROJECTS | 70,879 5,021 | 850,551 | 850,551 | 212,638 | 200.400 | 212,638 | 25% <u>12%</u> |
| | WATER-CAPITAL PROJECTS WATER FUND(S) | 852,214 | 2,158,239 11,805,229 | 2,951,478 14,265,938 | 21,007 2,051,607 | 329,186 1,970,766 | 350,193 4,022,373 | 28% |
| TOTAL I | ENTERPRISE FUNDS | 1,231,857 | 23,239,815 | 27,095,823 | 5,119,778 | 2,408,390 | 7,528,168 | 28% |
| INTERN | AL SERVICE FUNDS | | | | | | | |
| INTERN | AL SERVICE FUNDS | | | | | | | |
| 730 | INFORMATION SERVICES | 34,808 | 245,262 | 262,996 | 53,909 | 157,921 | 211,830 | 81% |
| 740 | BUILDING MAINTENANCE | 29,105 | 642,029 | 665,031 | 82,516 | 23,974 | 106,490 | 16% |
| 745 | CIP ENGINEERING | 96,679 | 1,447,120 | 1,552,806 | 294,343 | 145,522 | 439,865 | 28% |
| 760 | UNEMPLOYMENT | - | 30,000 | 30,000 | - | - | - | n/a |
| 770 | WORKERS COMPENSATION | 38,378 | 697,200 | 736,200 | 168,695 | 36,574 | 205,269 | 28% |
| 790 | EQUIPMENT REPLACEMENT | 9,264 | 251,761 | 260,878 | 9,557 | 3,161 | 12,718 | 5% |
| 793 795 | CORP YARD COMMISSION GEN. LIABILITY INSURANCE | 1,658 6,278 | 160,005 371,600 | 170,920 371,600 | 21,571 264,395 | 6,962 | 28,533 264,395 | 17% 71% |
| TOTAL I | INTERNAL SERVICE FUNDS | 216,170 | 3,844,977 | 4,050,431 | 894,986 | 374,114 | 1,269,100 | 31% |
| | | , | ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,, | ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,, | 20 1,000 | ,· | 1,200,100 | 2270 |
| AGENC | Y FUNDS | | | | | | | |
| 841 | MORGAN HILL BUS RANCH I | 931 | 723,706 | 723,706 | 984,117 | - | 984,117 | 136% |
| 842 | MORGAN HILL BUS RANCH II | 1,123 | 38,838 | 38,838 | 37,482 | - | 37,482 | 97% |
| 843 | MORGAN HILL BUS RANCH 98 | | 871,086 | 871,086 | 579,194 | - | 579,194 | 66% |
| 845 | MADRONE BP-TAX EXEMPT | 1,382 | 799,731 | 799,731 | 505,592 | - | 505,592 | 63% |
| 846 | MADRONE BP-TAXABLE | 719 | 172,343 | 172,343 | 95,355 | - | 95,355 | 55% |
| 848 | TENNANT AVE BUS PARK AD | - | - | - | - | - | - | n/a |
| 881 | POLICE DONATION TRUST | - | - | - | - | - | - | n/a |
| TOTAL A | AGENCY FUNDS | 5,137 | 2,605,704 | 2,605,704 | 2,201,740 | - | 2,201,740 | 84% |
| REPORT | T TOTAL | 3,735,012 | 103,341,088 | 128,082,430 | 26,097,566 | 20,855,757 | 46,953,323 | 37% |
| | | | | | | | | |



City of Morgan Hill Enterprise Funds Report - Fiscal Year 2003/04 For the Month of September 30, 2003 25% of Year Completed

YTD INCOME STATEMENT FOR CURRENT AND PRIOR YEAR

| | | Sewer Oper | rations | | | Water Ope | Water Operations | | | | |
|--|------------------------------------|--------------------------|-------------|------------------------|---------------------------------|-------------------------------|-------------------|------------------------------|--|--|--|
| | | | % of | Prior | | | % of | Prior | | | |
| | Budget | YTD | Budget | YTD | Budget | YTD | Budget | YTD | | | |
| Operations | | | | | | | | | | | |
| Revenues | | | | | | | | | | | |
| Service Charges Meter Install & Service | \$ 5,321,460 | \$ 1,350,967 | 25% | \$ 1,471,908 | \$ 5,738,350 40,000 | \$ 2,398,628 17,830 | 42% 45% | \$ 2,289,041 9,350 | | | |
| Other | 113,950 | 39,299 | 34% | 22,587 | 249,584 | 550,815 | 221% | 44,512 | | | |
| Total Operating Revenues | 5,435,410 | 1,390,266 | 26% | 1,494,495 | 6,027,934 | 2,967,273 | 49% | 2,342,903 | | | |
| Expenses | | | | | | | | | | | |
| Operations Meter Reading/Repair Utility Billing/Water Conservation | 4,533,215 | 1,039,495 | 23% | 841,214 | 4,750,307 637,156 399,783 | 1,196,208 97,995 86,309 | 25% 15% 22% | 978,468 132,656 75,742 | | | |
| Total Operating Expenses | 4,533,215 | 1,039,495 | 23% | 841,214 | 5,787,246 | 1,380,512 | 24% | 1,186,866 | | | |
| Operating Income (Loss) | 902,195 | 350,771 | | 653,281 | 240,688 | 1,586,761 | | 1,156,037 | | | |
| Nonoperating revenue (expense) | | | | | | | | | | | |
| Interest Income Interest Expense/Debt Services Principal Expense/Debt Services | 51,960 (856,625) (1,115,000) | (297,135) (1,115,000) | 35% 100% | (692,799) (635,000) | , , , | 4,175 | | | | | |
| Total Nonoperating revenue (expense) | (1,919,665) | (1,412,135) | | (1,327,799) | (545,440) | 4,175 | | - | | | |
| Income before operating xfers | (1,017,470) | (1,061,364) | | (674,518) | (304,752) | 1,590,936 | | 1,156,037 | | | |
| Operating transfers in Operating transfers (out) | - (913,285) | - (228,321) | 25% | - (97,844) | 1,045,785 (917,500) | 261,446 (259,966) | 25% 28% | 43,469 (104,375) | | | |
| Net Income (Loss) | \$ (1,930,755) | \$ (1,289,685) | | \$ (772,362) | \$ (176,467) | \$ 1,592,416 | | \$ 1,095,131 | | | |



City of Morgan Hill **Balance Sheets - Water and Sewer Funds September 30, 2003** 25% of Year Complete

| | Sewer Operations (640) | Sewer Expansion Stabilization Capital Projects (641-643) | Water Operations (650) | Water Expansion Stabilization Capital Projects (651-653) |
|--|------------------------------|--|------------------------------|--|
| ASSETS | | | | |
| Cash and investments: | | | | |
| Unrestricted | 3,291,130 | 6,666,859 | 3,105,885 | 4,491,263 |
| Restricted ¹ | 1,898,140 | 5,375,191 | 390,761 | 0 |
| Accounts Receivable | | 6,763 | | |
| Utility Receivables | 708,920 | , | 1,164,031 | |
| Less Allowance for Doubtful Accounts | (2,633) | | (2,751) | |
| Notes Receivable ² | | | | |
| Fixed Assets ³ | 31,802,422 | 9,911,459 | 23,624,143 | 8,620,812 |
| Total Assets | 37,697,979 | 21,960,272 | 28,282,069 | 13,112,075 |
| LIABILITIES | | | | |
| Accounts Payable and Accrued Liabilities Deposits for Water Services & Other Deposits Deferred Revenue 4 | 256,732 | 128,211 | 60,504 35,524 | |
| Bonds Payable | 25,390,000 | | 5,985,863 | |
| Discount on Bonds and Other Liabilities | (2,705,125) | | (957,773) | |
| Accrued Vacation and Comp Time | 41,966 | | 88,959 | |
| Total liabilities | 22,983,573 | 128,211 | 5,213,077 | 0 |
| FUND EQUITY | | | | |
| Contributed Capital Retained Earnings | 6,686,483 | | 13,047,150 | |
| Reserved for: | | | | |
| Noncurrent water/sewer assets & debt | 9,075,581 | 9,911,459 | 18,507,094 | 8,620,811 |
| Encumbrances | 109,500 | 328,124 | 744,258 | 1,226,508 |
| Notes Receivable Restricted Cash | 1,898,140 | 0 | 390,761 | |
| Nestricted Gasii | 1,030,140 | | 390,701 | |
| Total Reserved Retained Earnings | 11,083,221 | 10,239,583 | 19,642,113 | 9,847,319 |
| Unreserved Retained Earnings | 3,631,185 | 11,592,478 | 3,426,879 | 3,264,756 |
| Total Fund Equity | 14,714,406 | 21,832,061 | 23,068,992 | 13,112,075 |
| Total Liabilities and Fund Equity | 37,697,979 | 21,960,272 | 28,282,069 | 13,112,075 |

¹ Restricted for Bond Reserve requirements and capital expansion.
² Includes Note for Sewer Financing Agreements.

³ Includes Water and Sewer infrastructure and the City's share of the Wastewater treatment plant.

⁴ Includes the deferred payment portion of the loans noted above.



City of Morgan Hill Balance Sheets for Major Funds - Fiscal Year 2003/04 September 30, 2003 25% of Year Complete

L/M Housing

Sewer

Water

RDA

| | (Fund 010) | (Fund 317) | (Fund 327/328) | (Fund 640) | (Fund 650) |
|--|------------|------------|----------------|---------------------------|------------------------|
| ASSETS | | | | | |
| Cash and investments: | | | | | |
| Unrestricted | 10,561,735 | 9,351,402 | 2,967,079 | 3,291,130 | 3,105,885 |
| Restricted ¹ | 4,150 | | | 1,898,140 | 390,761 |
| Accounts Receivable | 923,127 | 3,200 | 7,806 | 708,920 | 1,164,031 |
| Utility Receivables (Sewer and Water) Less Allowance for Doubtful Accounts | | | | (2,633) | (2,751) |
| Loans and Notes Receivable ² | 511,225 | 3,366,625 | 24,304,941 | ()) | () -) |
| Prepaid Expense | , | | , , | | |
| Fixed Assets ³ | | 71,049 | | 31,802,422 | 23,624,143 |
| Total Assets | 12,000,237 | 12,792,276 | 27,279,826 | 37,697,979 | 28,282,069 |
| LIABILITIES | | | | | |
| Accounts Payable and Accrued Liabilities | 274,287 | 16,500 | 13,354 | 256,732 | 60,504 |
| Deposits for Water Services & Other Deposits | 25,990 | | | | 35,524 |
| Deferred Revenue 4 | 1,453,155 | 1,165,990 | 6,286,255 | | |
| Bonds Payable Discount on Bonds and Other Liabilities | 155,174 | | | 25,390,000 (2,705,125) | 5,985,863 (957,773) |
| Accrued Vacation and Comp Time | 100,174 | | | 41,966 | 88,959 |
| Total liabilities | 1,908,606 | 1,182,490 | 6,299,609 | 22,983,573 | 5,213,077 |
| FUND EQUITY | | | | | |
| Contributed Capital | | | | 6,686,483 | 13,047,150 |
| Fund Balance / Retained Earnings | | | | | |
| Reserved for: | | | | | |
| Noncurrent water/sewer assets & debt | | | | 9,075,581 | 18,507,094 |
| Encumbrances | 344,023 | 14,599,527 | 40,739 | 109,500 | 744,258 |
| Restricted Cash | | 71,049 | | 1,898,140 | 390,761 |
| RDA properties held for resale Loans and Notes Receivable | | 2,200,635 | 18,018,687 | | |
| Total Reserved Fund Equity | 344,023 | 16,871,211 | 18,059,426 | 11,083,221 | 19,642,113 |
| Designated Fund Equity ⁵ | 7,300,000 | | | | |
| Unreserved/Undesignated Fund Equity | 2,447,608 | -5,261,425 | 2,920,791 | 3,631,185 | 3,426,879 |
| Total Fund Equity | 10,091,631 | 11,609,786 | 20,980,217 | 14,714,406 | 23,068,992 |
| Total Liabilities and Fund Equity | 12,000,237 | 12,792,276 | 27,279,826 | 37,697,979 | 28,282,069 |

General Fund

¹ Restricted for Petty Cash use, Bond Reserve requirements and sewer and water capital expansion.

² Includes Housing Rehab loans, Financing Agreements for Public Works Fees and loans for several housing and Agency projects.

³ Includes Water and Sewer infrastructure, the City's share of the Wastewater treatment plant and RDA properties held for resale.

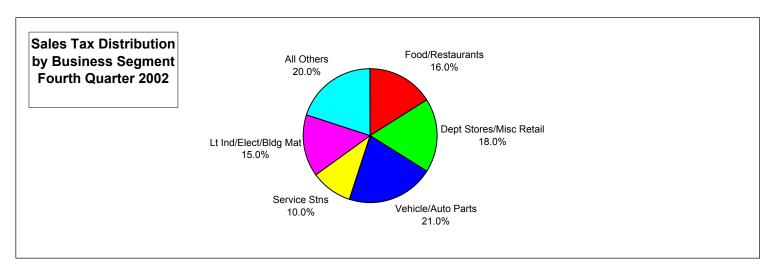
⁴ Includes the deferred payment portion of the loans noted above.

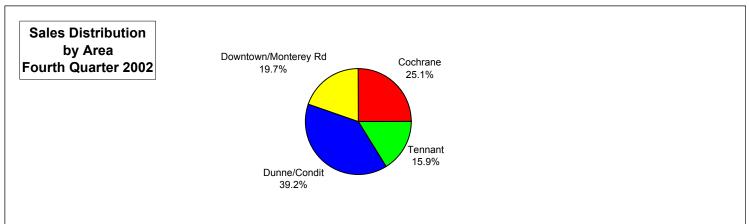
⁵ Designated for economic uncertainty, emergencies, and Fire Master Plan implementation



City of Morgan Hill Sales Tax Comparison - Fiscal Year 2003/04 For the Month of September 2003 25% of Year Complete

| | Amount Collected for Month for Fiscal Year | | | Amount Collected YTD for Fiscal Year | | | Comparison of YTD for fiscal years | |
|---------------------------|--|-----------|-------------|--------------------------------------|-------------|-------------|------------------------------------|----------------|
| Month | 03/04 | 02/03 | 01/02 | 03/04 | 02/03 | 01/02 | 03/04 to 02/03 | 03/04 to 01/02 |
| | | • | | | • | | | |
| July | \$338,300 | \$367,600 | \$377,700 | \$338,300 | \$367,600 | \$377,700 | (29,300) | (39,400) |
| August | \$451,000 | \$447,000 | \$503,600 | \$789,300 | \$814,600 | \$881,300 | (25,300) | (92,000) |
| September | \$232,994 | \$361,932 | \$437,056 | \$1,022,294 | \$1,176,532 | \$1,318,356 | (154,238) | (296,062) |
| October | | \$354,915 | \$339,000 | | \$1,531,447 | \$1,657,356 | | |
| November | | \$474,800 | \$452,000 | | \$2,006,247 | \$2,109,356 | | |
| December | | \$384,154 | \$538,465 | | \$2,390,401 | \$2,647,821 | | |
| January | | \$368,600 | \$393,900 | | \$2,759,001 | \$3,041,721 | | |
| February | | \$487,195 | \$466,068 | | \$3,246,196 | \$3,507,789 | | |
| March | | \$225,908 | \$351,548 | | \$3,472,104 | \$3,859,337 | | |
| April | | \$292,698 | \$341,042 | | \$3,764,802 | \$4,200,379 | | |
| May | | \$394,500 | \$461,500 | | \$4,159,302 | \$4,661,879 | | |
| June | | \$502,924 | \$275,116 | | \$4,662,226 | \$4,936,995 | | |
| Year To Da | ite Totals | | | \$1,022,294 | \$4,662,226 | \$4,936,995 | | |
| Sales Tax Budget for Year | | | \$4,650,000 | \$5,330,000 | \$5,300,000 | | | |
| Percent of Percent of | Budget increase(decreas | e) | | 22% | 87% | 93% | -13% | -22% |





Submitted for Approval: October 17, 2003

CITY OF MORGAN HILL JOINT SPECIAL AND REGULAR REDEVELOPMENT AND SPECIAL CITY COUNCIL MEETING MINUTES – SEPTEMBER 24, 2003

CALL TO ORDER

Chairperson/Mayor Kennedy called the special meeting to order at 5:05 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Sellers, Tate and Chairperson/Mayor Kennedy.

Late: Agency/Council Members Carr, Chang (both arrived at 5:10 p.m.)

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

1. <u>CRIME CONTROL STRATEGY WORKSHOP</u>

Chief of Police Galvin presented the staff report. He indicated that in January 2003, the Council discussed goals and objectives for the 2003 calendar year. One goal identified by the Council was to have a crime control strategy presentation by the Police Department. A five minute video presentation was presented that talked about the Police Department's recruitment efforts. He identified how crimes are documented and what are the particular problems that are found in Morgan Hill. He said that the Uniform Crime Reporting System is used to report the 8 major offense categories to the FBI by Police Chiefs and Sheriffs. He stated that it is the primary responsibility of local police departments to address the eight major offences with a joint responsibility with the Fire Department on arson cases. He stated that the Morgan Hill Police Department is meticulous on how it reports crime; accounting for a possible increase in crimes seen over the last couple of years. He said that the Mail Out Report was implemented in 1992 as a result of the financial problems the City was facing at the time. He said that about 20% of the police reports are generated by citizens through Mail Out Reports for minor offenses/crimes. He compared the City's crime rates to those of other cities in the County, including successes in solving crimes. He said that the City has to retain a reasonable number of police officers to support the community, especially as it grows. He said that the three major challenges to the community are: domestic violence (biggest problem), drugs (including alcohol), and gang activities.

Sergeant Dave Swing addressed domestic violence. He said that domestic violence incidents accounts for 2 of the 3 past homicides in the community. Comparing a six month period from last year to the same six month period this year, domestic violence incidents have increased 16% in the City. He identified the strategies currently being employed by the Police Department to help with domestic violence investigations as follows: training, collaboration (with Community Solutions), documentation, enforcement, and equipment (e.g., digital camera tool used in field). He said that other strategies include the following: officers to conduct follow ups whenever possible acquire digital audio recorders for police officers to have in the field to record statements at the scene, continue to work with Community Solutions and continue the advocacy/outreach efforts.

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Lieutenant Joe Sampson addressed drug sales and drug abuse, indicating that the strategy is directed enforcement coupled with consistent community support. He said that City employees participate in the Unified Narcotics Enforcement Team (UNET), a county-wide team sponsored by the Department of Justice. He stated that UNET consists of officers from the tri county area and that Morgan Hill has one officer currently assigned to the team. He indicated that UNET is active in the pursuit of cases involving the sale and manufacturing of narcotics. He felt that the UNET team benefits the City of Morgan Hill because of its ability to work with confidential enforcement; it deploys unified county resources and stages lengthy labor intensive assaults with suspected narcotic traffickers. The third crime control strategy is based on the aggressive pursuit of case clearance through the City's investigating unit.

School Resources Officer Rojas addressed strategies as they relate to and deal with gangs and gang related criminal activities. By enforcing a color ban, the school administration enhances campus safety. The police department, as a whole, responds to each gang related incident with as many resources as possible to offset the threat to safety. She said that the affects that the street gangs impose on the community at large are those associated with deterioration of a neighborhood through vandalism and graffiti activities. She said that the police department makes every effort to educate the residents of identified areas in how to recognize gang members and encourage them to take an active part to remove the activity by reporting gang related activities. The Morgan Hill police department has gang officers that keep abreast of the current trends of street gangs. These officers also attend Santa Clara County Probation and Parole Gang meetings as well as Tri-County Gang Meetings on a monthly basis.

Officer Max Cervantes indicated that police officers introduced new "soft" uniforms worn by the School Resources Officers at the middle and high schools. This uniform allows the School Resource Officers to be a little more approachable.

Lieutenant Terrie Booten addressed the police department's crime control strategies: problem oriented policing; focus on areas of concentration; use of tools (e.g., Neighborhood Watch Programs, Mr. McGruff, bicycle patrol, and K-9 Program); and resources (develop/implement municipal codes to combat juvenal crimes late at night, going into neighborhoods and abandoned homes, work with code enforcement officer, and other cooperative participations with Community Solutions, downtown merchants and service groups, etc.).

Chief of Police Galvin addressed two technological advancements that have been helpful in solving crimes: DNA testing and automation of finger printing. Locally, there are four areas that the police department is making progress: 1) within 90 days, the City will have a County-wide crime analysis system county-wide. The City will be able to access crime trends and data. 2) The City will be up and running on a mutual aid channel. 3) An enhanced wireless 911 technology will send most information and most calls for service to the City's dispatch center, an improvement from past years. 4) Use of computers that eliminates the need for data clerks, tapes, etc., that slow down the process. He addressed the evaluation form that will be sent out randomly based on case numbers to citizens asking them to evaluate police services to help measure performance levels. He said that the City/Council has an excellent team of sworn and civilian officers in the police department that will move the police department forward. He said that the future is bright for the police department as it will have a new facility and a newly designed police patch, unique to the community. He indicated that the police

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department is appreciative of the Council's support for the new police facility that will assist the police officers do a better job in an efficient and effective manner for the community.

Mayor Kennedy stated that he has been on the Council for 13 years and that this is the best presentation he has seen presented by police staff as it is thorough and complete. Of the successes that have been experienced, he inquired what success Chief Galvin would like to build upon.

Chief of Police Galvin said that this community has a great interest through the YES Program and other activities that look to the community's youth. He indicated that he and Mayor Kennedy have discussed a police probation team that would deal with young offenders very early own, diverting them out of the criminal justice system/juvenile hall. A police probation team would be something that could be addressed early on and turn youths around. He said that City will be going through a difficult financial time the next 4-5 years. It is his hope that the police department will be able to maintain financial support from the City. He said that there has been a trend for City employees to move out of the City and that the trend has been reversed, noting that a lot of the police officers are moving back to the community. He said that the home assistance program has been an asset.

Council Member Tate stated that he was intrigued by the productivity/efficiency that is achieved when you look at the fact that Morgan Hill is the third worst in the County crime statistics wise. He noted that the Morgan Hill police department is very productive. He felt that citizens need to understand that they are getting more for their money.

Council Member Carr noted that Officer Rojas talked about geographical areas in relationship to gang problems. He felt that the City could pursue crime control strategies that are not solely related to the police department. He said that economic development can be a tool that can be used among other tools at city hall in order to address crimes in specific geographic areas.

Chief of Police Galvin stated that the City needs to be careful not to place a "tag" on a particular neighborhood. He said that Morgan Hill does not have any real bad neighborhoods. There are areas of concern where there are higher densities and lower economics that looks to crime. He said that he is hesitant and careful on trying not to label any neighborhoods as there good neighborhoods throughout the City.

Council Member Carr said that he was not necessarily referring to residential neighborhoods. He felt that there may be some shopping centers or business areas that can address crime with the use of economic development.

Mayor Kennedy suggested that the presentation, or portions of the presentation, be aired on Channel 17 and that certain portions be posted of the City's website as it is an important presentation that should be made available to the community.

Action: No Action Taken.

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Redevelopment Agency and City Council Action

CLOSED SESSIONS:

City Attorney Leichter announced the following closed sessions.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Legal Authority Government Code 54957

Public Employee Performance Evaluation: City Manager

Attendees: City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Chairperson/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairperson/Mayor Kennedy adjourned the meeting to Closed Session at 6:15 p.m.

RECONVENE

Chairperson/Mayor Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

Chairperson/Mayor Kennedy announced that no action was taken on the City Attorney's performance evaluation closed session item and that the remainder of the closed session items would be continued to the conclusion of the open session meeting.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Chairperson/Mayor Kennedy, Andrew Barna, Daughters of Charity, led the Pledge of Allegiance.

SUBCOMMITTEE REPORTS

Mayor Kennedy indicated that he is the Santa Clara County Cities Association representative to the Santa Clara Valley Transportation Authority (VTA) Financial Ad Hoc Committee. The Committee met this

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morning, indicating that VTA asked a judge to make a ruling on whether the Measure A transportation funds could be used to pay for a bond indebtedness to fund operating costs for the VTA. He indicated that the judge ruled that this was possible. The effect of this ruling is that it will allow VTA to continue operating without having to make drastic cuts in their operating costs and in the operations of their various means of transportation, especially bus and light rail services, and Caltrain. He said that 21% additional cuts would have occurred had the judge not made this ruling. He announced that he and Mayor Pro Tempore Chang both recently visited the City's newest sister city in San Martin de Hidalgo, Mexico. He indicated that he and Mayor Pro Tempore Chang were warmly welcomed by their mayor, 12-member city council and citizens. He shared mementos received that included a key to the city, a hand made attractive plaque with the Morgan Hill logo and other gifts. He said that one of the most moving parts of the visit was a tour of a small park built in one of the community's barrios as a result of their mayor's visit to Morgan Hill. The park is named "Morgan Hill Park." He looks forward to a long lasting relationship, building bridges with the community of Mexico. He noted that there is a large Latino population in Morgan Hill and that there is a natural connection to have a Sister City in Mexico. He said that the Mayor, his staff and several council members will be visiting Morgan Hill for the Fourth of July celebration. The challenge will be to reciprocate in some fashion as they did to Morgan Hill and repeat their warm welcome.

Mayor Pro Tempore Chang said that it was a great visit to San Martin de Hidalgo as were the people and the culture. She said that she has pictures to share and caps from San Martin di Hidalgo for each Council Member.

Council Member Sellers thanked Mayor Kennedy and Mayor Pro Tempore Chang for spending their own time as well as their own money to go on this trip and establish this Sister City relationship.

PRESENTATIONS

Daughters of Charity representative, Joanne Allen, Senior Vice-President and Chief Strategic/Medical Services Officer, O'Connor Hospital, presented a power point presentation on the strategic draft plan for the Morgan Hill site. She indicated that on September 22, 2003 the Daughters of Charity Board accepted a new name for the campus in Morgan Hill, the "DePaul Health Center." She indicated that the Daughters of Charity will be applying for permits and the name of the facility with their attorney and the City.

Andrew Barna, Director of Strategic Development, addressed what the Daughters of Charity would be bringing to the City of Morgan Hill and to the new DePaul Health Center. He said a strategic plan has been created that focuses their efforts. He addressed mission services, clinical/service excellence, employer/employee relationship, partnering with physicians, growth of the facility; and financial excellence/stability. He said that these are the driving strategies that would be brought to the DePaul Health Center.

Ms. Allen said that it is expected to fully lease the medical office building with local physicians by July 2004 (90% occupancy). She said that the Daughters of Charity are talking with physicians in Morgan Hill who may be interested in moving to the DePaul Health Center. They are finalizing discussions with approximately nine Morgan Hill physicians. It is expected that space will run out for potential

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physicians, reiterating that they are extending invitations to Morgan Hill physicians then to Gilroy physicians. In collaboration with St. Louise Regional Hospital, laboratory and radiology services will be made available at the site within six months. She said that there are physicians interested in venturing with the Daughters of Charity for urgent care center services. She said that Kaiser is interested in some of the building site but that she was not sure if they were interested in the entire site. If Kaiser only wants to utilize a portion of the facility, the Daughters of Charity will investigate who else could be brought into the facility to offer medical services. The Daughters of Charity has also had discussions with children hospitals to bring pediatric services to the site (e.g., UCS in Fresno and Oakland's Children's Hospital). They are in conversations with architects about the adjacent site with regards to an assisted skilled facility and looking at partnering with them in order to provide a full scope of assisted living services in Morgan Hill. Plans are being put together for a feasibility report, looking at the financing and working with Barry Swenson as well as the builder. She will have discussions next week with Kindred Care, a long term sub acute provider of services. She said that this team will be in the Morgan Hill facility once a week and can be found in the acute/general administration side of the facility. She said that they are looking at turning on the power and water in anticipating of moving quickly with the scope of bringing healthcare services to Morgan Hill. She indicated that physicians will be moving into the new medical office building who are signing leases and giving terms to their existing landlords. She said that new life will be seen in the new medical office facility as well as new signage.

Vice-chair/Mayor Pro Tempore Chang agreed with Mayor Kennedy that this is exciting news. She inquired whether there will be an increase in general practitioner or internal medicine physicians.

Ms. Allen indicated that there are two internal medicine physicians in collaboration with the St. Louise Regional Hospital who are moving their practices from Kentucky to O'Connor Hospital. She identified that they both are board certified in internal medicine. She said that Daughter's of Charity/O'Connor Hospital are looking at a strong primary care base at the facility with specialists that are needed in the community. Being contemplated is a time share suite to be used by specialists once or twice a week. It is proposed to have a blend of primary care physicians, especially for the urgent care center, as well as specialists. She requested Council continued support.

OTHER REPORTS

Executive Director/City Manager Tewes reported that the results of the monthly testing of the City's domestic water wells have been received. He said that in all instances, the wells have been found to be non detect for perchlorate. He indicated that the Council has directed that the City engage in a regiment of testing that is more than the State would otherwise require on a monthly basis. He thanked the Perchlorate Citizens Advisory Group chaired by Sylvia Hamilton of San Martin. They have discussed this issue in a very responsible fashion and have met with the County Health Officer as well as the State officer who determines the standards for drinking water. He said that this group has done a tremendous job in understanding the rigor in which the water standards are set and the impacts to health. He felt that this citizens group has done a good job in disseminating this information to the community in a responsible way.

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CITY TREASURER'S REPORT

The City Treasurer's Report was deferred to a future meeting date.

PUBLIC COMMENTS

Chairman/Mayor Kennedy opened the floor to public comment for items not appearing on this evening's agenda. No comments were offered.

Redevelopment Agency Action

CONSENT CALENDAR:

Chairman Kennedy removed item 2 from the Consent Calendar for brief comments.

2. AUGUST 2003 FINANCE & INVESTMENT REPORT

Chairman Kennedy said that in reading the summary, it is interesting for the public to know that with respect to the Redevelopment Agency's revenue and income, the amended Redevelopment Agency has a cap of \$147 million. As of this date, the City has received \$56,144,486. This amount is over a third of the Redevelopment Agency revenues. He was not sure whether the public was aware of how much the Redevelopment Agency has played a role in the development of the community with the new Community and Cultural Center, new aquatics center and infrastructure such as Butterfield Boulevard. He said that the Redevelopment Agency has helped the City with a number of projects that have been built or under way.

<u>Action:</u> By consensus, the Agency Board <u>Accepted</u> and <u>Filed</u> the report.

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

Action: On a motion by Agency/Council Member Sellers and seconded by Agency/Council Member Carr, the Agency Board/Council unanimously (5-0) Approved Consent Calendar Items 3-5, as follows:

3. RE-BUDGETING 2002-2003 PROJECTS/PROGRAMS

<u>Action:</u> <u>Approved</u> the Re-budgeting of 2002-2003 Project/Program Costs in the 2003-2004 Budget.

4. <u>CARRYOVER OF ENCUMBRANCES FROM 2002-2003</u> *Action: Filed Report.*

5. <u>SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF SEPTEMBER 17, 2003</u>

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Action: Approved the Minutes as Written.

City Council Action

CONSENT CALENDAR:

Mayor Pro Tempore Chang removed item 6 from the Consent Calendar for brief comment.

<u>Action:</u> On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) <u>Approved</u> Consent Calendar Items 7-11, as follows:

7. <u>ESTABLISHMENT OF CLASSIFICATION AND SALARY RANGE FOR NEW POSITION OF RECREATION SERVICES COORDINATOR</u>

<u>Action:</u> <u>Adopted</u> New Job Description and Salary Range for the Position of Recreation Services Coordinator

8. <u>ESTABLISHMENT OF ADDITIONAL POLICE OFFICER POSITION FOR LIMITED PERIOD BECAUSE OF UNUSUAL CIRCUMSTANCES</u>

<u>Action:</u> 1) <u>Established</u> Additional Police Officer Position for Limited Period; and 2) <u>Appropriated</u> \$60,000 in the General Fund (010) for Fiscal Year 2003/04.

9. <u>ADOPTION OF RESOLUTION IN SUPPORT OF WATER RESOURCES PROTECTION</u> <u>COLLABORATIVE</u>

Action: Adopted Resolution No. 5720 in Support

10. <u>APPROVAL OF AMENDED PURCHASE AGREEMENT FOR TENNANT AVENUE WIDENING PROJECT (APN: 817-04-007)</u>

Action(s): 1) Approved Amended Purchase Agreement; and 2) Authorized the City Manager to Execute Purchase Agreement, Subject to Approval as to Form by the City Attorney, with the Owners of APN 817-04-007 for Total Compensation of \$51,500 Plus Escrow and Closing Costs.

11. <u>AQUATICS CENTER PROJECT – AUGUST CONSTRUCTION PROGRESS REPORT,</u> <u>ADDITIVE ALTERNATIVES AND LEEDS CERTIFICATION PROCESS</u>

Action(s): 1) Received Progress Report – Information Only; 2) Approved the Addition of Bid Alternatives: #1 Deep Competition Pool, #2-Sprayground, #3-Six Lane Instructional Pool and #6-Integral Colored Concrete Pool Deck for a Total Contract Change Order of \$341,728; and 3) Directed Staff to Proceed with Attaining LEED's Rating Without Actually Receiving Certification.

6. <u>ALTERNATIVES TO SPRINKLER PROTECTION FOR RESIDENTIAL TO COMMERICAL CONVERSIONS IN DOWNTOWN</u>

Mayor Pro Tempore Chang complimented Director of Business Assistance and Housing Services Toy and Assistant to the City Manager Dile for coming up with the guidelines for alternative methods to promote conversions from residential to commercial in the downtown areas, especially for small businesses.

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Action:

On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) <u>Approved</u> the Guidelines for Alternative Methods and Materials for In-Lieu Sprinkler Protection for Residential to Commercial Conversions in Downtown.

Redevelopment Agency and City Council Action

OTHER BUSINESS:

12. <u>SELECTION CRITERIA FOR THE DOWNTOWN REQUEST FOR CONCEPTS PROCESS</u>

Director of Business Assistance and Housing Services Toy presented the staff report. He indicated that the Economic Development Committee (EDC), consisting of Council Members Carr and Tate, have also considered comments from the Morgan Hill Downtown Association. The EDC felt that the criteria reflects the suggestions from the Morgan Hill Downtown Association. He gave examples of high priorities that would encourage new investment in the downtown to strengthen the downtown by emphasis on infill development. He indicated that mid level priorities deal with higher densities in the downtown as well as total potential cost to the Agency. In terms of low priorities, he said that it was important to note that the EDC and staff recognizes that many of the low priorities may move to higher levels of importance as the City moves through the process. He indicated that staff and the EDC are recommending that the proposals be divided into two categories: Category 1 – information gathering; and Category 2 – quick hitters. He said that it is the overall objective of Category 1 to rank the proposals and then determine how they should proceed in the process. Regarding Category 2, it is proposed to sort projects into this category if they meet the following criteria: conforms to the downtown plan, can be implemented with minimal cost, implemented quickly to show results, require a minimum amount of funding or can be funded with existing programs. In terms of the review process, he indicated that staff and the EDC would evaluate and determine which proposals fall under Category 1 or 2. He said that it is a goal to implement Category 2 projects in a timely manner and that if for some reason, a solution or an agreement cannot be reached with the different proposers, the project would be placed into Category 1 in order to collect more information, be evaluated or a determination be made that the proposal should not proceed at this time based on the fact that it is not a high priority project. Any programs that require additional financial assistance beyond the existing program would need to be brought back to the Agency for consideration. Therefore, the full Agency Board would always see concepts not being funded outside of standard programs. He stated that the EDC would report back to the Agency on the status of the quick hitter proposals. He said that the EDC recommends specific ranking of the category 1 proposals, specific proposals that should be invited to continue in the process, and the specific RFP process to be followed. He stated that prior to the issuance of an RFP; the EDC would recommend to the Agency as to the advisory role of the Morgan Hill Downtown Association in the process.

Agency/Council Member Carr indicated that Mr. Toy made a thorough report. He said that the EDC and staff have spent a lot of time thinking about the process, and reviewing the comments that the Downtown Association sent for review. He felt that the EDC has a good idea of how to move forward quickly.

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Agency/Council Member Tate agreed that the EDC had a wealth of input on different approaches. The EDC found a way to subdivide proposals into a couple of categories and how to approach them.

Agency/Council Member Carr said that the selection criteria is not set in stone as the EDC would like to incorporate some flexibility in the process as the City moves through this process.

Chairman/Mayor Kennedy stated that as he read through the criteria and the process, he felt that the EDC has done an excellent job in putting the proposal together. He liked the idea of having quick hitters and two different categories as this provides flexibility to move forward.

Vice-chair/Mayor Pro Tempore Chang thanked Agency/Council Member Tate and Carr for being the back bone for their contribution to the selection criteria.

Chairman/Mayor Kennedy opened the public comment.

Dan Craig, Morgan Hill Downtown Association, indicated that there were board and committee members in attendance this evening. He said that the Downtown Association is excited about the 23 proposals submitted as a result of the RFC as there is a lot of interest, activities, and potential for the downtown. He informed the Agency Board/Council members that the Downtown Association was asked to respond to the draft criteria of the EDC. He presented the Council with a copy of the Downtown Association's draft comments. While it is true that the Downtown Association's criterion was considered, the Downtown Association did not expect to bring anything new to the criteria. However, the Downtown Association felt that the criterion was too broad. It was the intent of the Downtown Association to consolidate what was important to them. He indicated that the Downtown Association was not in attendance to oppose or go against staff's recommendation. However, he requested that that Downtown Association's criteria be included as an attachment or addendum that can remain with the process so that their specific criteria/priorities could be part of the consideration. He said that there were several items that were important to the Downtown Association as they were developing their list of criteria. He said that the Downtown Association believes that there are important considerations that need to be taken into account based on the limited resources. The Downtown Association is supportive of low interest loans before considering grants in order to achieve more from the limited resources. Also, the Downtown Association would like to see a revolving loan fund so that funds that are paid back can go back into the downtown for future projects. The Downtown Association would like to know whether the \$3 million is the only amount earmarked for the downtown. It is their hope that some of the public infrastructure projects (e.g., entryway treatments, Third Street improvements) would find other sources of funds so that the City is not in a position of an "either or" proposal. The \$3 million can be dedicated to private proposals that have been seen in the process. He said that item 4 in the handout should be considered if Measure P restrictions are an impediment to downtown housing. He said that the Downtown Association is afraid that even if there are financial incentives to promote housing in the downtown that Measure P would somehow impede this process. The Downtown Association sees downtown as a "smart growth" zone with high density transient oriented development. An exemption to Measure P would generate a lot of interest in the downtown to develop housing that would otherwise see an extraneous project outside the downtown area.

Agency/Council Member Tate felt that Mr. Craig expressed a legitimate concern relating to Measure P

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the way it exists today. He noted that the recommendations from the Measure P Update Task Force would be presented to the Council on October 15 following review and comment by the Planning Commission. He said that it was his recollection that the recommended update on Measure P to be placed on the March 2004 ballot would directly address Mr. Craig's concerns and recommendation. He encouraged Mr. Craig to attend the review sessions with the Council on the proposed Measure P update.

Chairman/Mayor Kennedy inquired whether staff has given thought to recycling the funds that are on loan.

Executive Director/City Manager Tewes said that the Council has allocated all of the \$147 million into various categories. As this is to be a short term loan, it was not deducted from any categories as it was treated as a cash flow item. Therefore, it is not new money that would be recycled back into the downtown. The City borrowed this money from other projects that have been allocated by the Agency Board/Council. He said that it was important to note that the Council has indicated that later in this calendar year, it would sit down again and think about all of its priorities and some of the issues to be discussed at that time. Whether or not any of the financial assistance to be provided would be considered, a revolving fund with the proceeds of the loans returning to the downtown is a policy matter for the Agency Board/Council to consider. As the City receives more information, it will learn whether loans are more appropriate versus grants and that the City structures them to meet the needs of the project.

Leslie Miles indicated that she is the president of the Downtown Association and the recipient of a \$350,000 low interest, short term loan on the Granary project. She said that this loan allowed her to propel this project into a \$1.2 million loan from South Valley National Bank in order to expedite this project. She indicated that a number of board members own property or own businesses in the downtown. The Downtown Association Board Members feel that the short term, low interest loan program is an opportunity to jump start projects in the downtown area as it is hard to attain financing for some of the projects in the downtown. She said that the Downtown Association would like to make sure that loans/grants given by the City are awarded to truly viable business owners, individuals who have experience in development, and experience in property ownership/running businesses.

No further comments were offered

Agency/Council Member Sellers felt that overall, the EDC did a good job in evaluating the criteria process. He stated that he would have switched categories 1 and 2 as category 1 items are being done quickly and that some thought is being given to category 2. He said that some of the low priority items were important to him. He felt that part of the process was making a declaration to the public as to what the Agency/Council is trying to achieve and how it is going about it. He indicated that it would be helpful, in the public's understanding, what the Council/Agency was trying to do and participate in the process. He said that it will be vital as a Council/City that it makes sure that the process is fair, clear and that project proponents follow the process. He felt that it made sense to consider loans, whenever possible, so that the funds can be recirculated. He wanted to make sure that what is being discussed is a loan that would have the same characteristics as a traditional bank loan and provides an opportunity to recirculate some of the funds where a grant would not. He said that it is crucial that the City undertakes the quick hit projects as quickly as possible as the holiday season is coming up. Also, there is a lot of momentum that is taking place in the downtown. Therefore, it would be helpful to see this supplement

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the downtown. It is crucial to see this influx of funds get new projects underway. He inquired if there was any way that the EDC could undertake an initial review of the quick hit projects by the end of the month and whether this needs to come back to the Council before they can be implemented. He inquired as to the timeline being anticipated by the EDC as he would like to see this undertaken as quickly as possible. He did not know if each project had to return to the Agency/Council before being considered.

Agency Member Carr said that one of the things that will speed up quick hit projects is if they could be acted upon with existing programs. It is the hope of the EDC to be able to funnel a lot of the quick hitters into existing programs and not have to come back to the Agency/Council and go through various kinds of process. If a quick hit project is covered by an existing program, they do not have to return to the Agency/Council. If the project is beyond the scope of an existing program, the project would need to return to the Agency/Council.

Agency/Council Member Tate said that the EDC would like to bring proposals before the Agency/Council if the proposals do not fit existing programs. However, the EDC would expedite the review before Agency/Council.

Vice-chair/Mayor Pro Tempore Chang understands that the EDC has come up with two categories. She inquired how much funding of the \$3 million is being recommended for quick hit projects and for the other projects.

Agency/Council Member Carr did not believe that funding has been defined in order to allow flexibility. If the City can move proposals into existing programs, the City could move them along quicker in a funding source that already exists and not take away dollars that could be used for other projects. He said that the EDC has not set aside funding for the quick hitters because the EDC may review the proposals and identify quick hitters. However, once reviewed, it may be decided that the proposal is more involved and would need to follow the process. He felt that the City would limit itself too much if it started to split up the \$3 million into different categories.

Agency/Council Member Sellers said that there will be those projects that can proceed if approved and that there are those that can proceed immediately. He said that there are a few proposals that are viable at this time and that if they wait 3-6 months to go through the process, they may no longer be viable. He recommended that these proposals be considered. He challenged the EDC to return to the Agency/Council by October 15 with the initial quick hit projects that are deemed able to proceed as it would mean a lot to the downtown if the EDC was able to do so.

Chairman/Mayor Kennedy supported Ms. Miles' comments and suggestion about the concept of using short term loans to help projects get the financing that they need quickly. He encouraged the EDC to do so assuming that the Agency/Council agrees that it wants the EDC to continue to be the group that will prioritize and categorize the proposals. He felt that it makes sense to continue with the EDC as they have worked on the selection criteria/process up to this point.

Agency/Council Member Sellers said that it would be conceivable that there would be a separate entity that would be reviewing downtown projects. If it turns out that it will be a process that the category 1, long term projects, take more time and are more involved, it may be worthwhile to consider having a

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separate process for these as the EDC is involved in other projects as well. If it turns out that this significantly expands the scope of work of the EDC, he expects the EDC members to return to the Agency/Council and advise it that this is the case. Short of this, he felt that it made sense to continue with the EDC.

Chairman/Mayor Kennedy indicated that he recollected funding \$3 million to be used as follows: \$1 million for Economic Development, \$1 million for housing, and \$1 million for infrastructure.

Agency/Council Member Carr did not believe that the Agency/Council has stated that the \$3 million is all that would be made available to implement the Downtown Plan. The EDC came back with the idea that the downtown competition would be a catalyst to get individuals to put proposals on the table as part of an economic development strategy. He said that the immediate proposals may kick start the downtown and should be at the forefront.

Vice-chair/Mayor Pro Tempore Chang did not see financial assistance on the commercial side.

Mr. Toy stated that a few years ago, the Council approved a conceptual commercial rehab program. However, it was put on hold pending approval of the Downtown Plan. It was felt that once the Downtown Plan was approved, it would dictate that the City creates a commercial rehab program. As part of the downtown RFC process, the EDC has discussed that this could be something that could be developed as a quick hit program to address proposals such as the Diaz's proposal.

Agency/Council Member Carr noted that the Council has taken action on the sprinklers and other kinds of improvements that need to take place and would be great tools to assist small commercial rehab proposals.

Vice-chair/Mayor Pro Tempore Chang indicated that she would refer the fees being charged for additions to residential versus commercial districts to the EDC for its review. She noted that there is a 15% difference in fees charged to residential additions in commercial zones.

Action:

On a motion by Agency/Council Member Sellers and seconded by Vice-chair/Mayor Pro Tempore Chang, the Agency/Council unanimously (5-0) <u>Approved</u> the Selection Criteria and Process with the added recommendation that the EDC gives consideration to loans, when possible, and try to recirculate some of the prior loans as well.

Vice-chair/Mayor Pro Tempore Chang presented Council Members with a hat from San Martin de Hidalgo. She indicated that her husband was been recognized as a distinguished professor for the Navel Post Graduate School. She requested that Council members sign a proclamation acknowledging this recognition.

City Council Action

OTHER BUSINESS:

13. GREENBELT ALLIANCE PLAN FOR COYOTE VALLEY

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Director of Community Development Bischoff presented the staff report, indicating that the City of San Jose has plans for the Coyote Valley area, specifically the northern area being planned for industrial development, the central portion for residential development and the southern portion as a greenbelt. In response to the City of San Jose's plans to develop Coyote Valley, the Greenbelt Alliance has convened a year long series of workshops that includes a lot of different stakeholders in the area who have an interest in Coyote Valley to address the development issues and try to come up with a vision/plan for the Coyote Valley. He indicated that Mayor Kennedy serves on this committee and helped develop this vision. As a result of this year long effort, the Greenbelt Alliance produced a document entitled "Getting it Right, Preventing Sprawl in Coyote Valley. He indicated that in attendance to address the Council this evening was Jessica Fitchen, the South Bay Field Representative for the Greenbelt Alliance with respect to this plan and its contents. He requested that the Council consider this plan and provide any comments it wishes with the direction that the City continues to monitor the City of San Jose's independent efforts to plan for development in the Coyote Valley area.

Ms. Fitchen provided the Council with a Fact Sheet that contains a general overview and some assumptions of Coyote Valley development, including the process by which the vision document came about and the next steps. She said that the vision document is a vision and is not meant to be a plan, a blue print, or something that would supercede the city's process that has been underway for a while. It is meant to be a set of policy statements and components that would be incorporated in the City of San Jose's specific plan. The vision document is meant to be a resource for this process. She indicated that the Greenbelt Alliance decided not to challenge San Jose's target of 50,000 jobs and 25,000 housing units because it was felt that there was no way that this vision would be reviewed by the City of San Jose if they did not take some of their initial assumptions as fact. It is a goal to preserve the agricultural heritage of the valley and that there be thought given to economic and social vitality, a new town approach. There is a concern that the way the City of San Jose currently has Coyote Valley laid out in its general plan is that the northern part of Coyote Valley would be campus industrial, all single use offices; mid Coyote Valley would be residential; and that south Coyote Valley would be the greenbelt.

Ms. Fitchen stated that the Greenbelt Alliance is calling for the City of San Jose to dissolve the boundary between north and mid Coyote Valley and plan a series of neighborhoods anchored by a town center. The Greenbelt Alliance does not want to see segregated employment centers. It is being recommended that residential uses be spread throughout the landscaped area rather than being sited in a compact form. She indicated that Coyote Valley is fairly large at approximately 11 square miles (7,000 acres) and that development would be a significant planning project for the City of San Jose. The vision depicts the City of San Jose's target of 50,000 primary support jobs and 25,000 residential units with a population of approximately 80,000 individuals being projected for Coyote Valley. This is a population greater than Morgan Hill and Gilroy combined. She presented a footprint of a future new town in both north and mid Coyote Valley and protected agricultural land along Monterey Road as well as park land, recreational uses and regional parks. Also, to be incorporated were neighborhood centers as well as a high school and junior high school. She indicated that there were a couple of items recommended to be achieved in the Vision with regards to smart growth in a green field development, including the integration of open space, the fundamental framework from which you would then build. If a new town is to be built, it is felt that there needs to be a jobs/housing balance, integrating affordable housing components (20% of affordability) and the different types of jobs with these housing units. She addressed hydrology,

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indicating that Fisher Creek will be used as a greenway, a food belt and would preserve/promote agriculture on the urban edge. She further addressed the open space system, traffic, circulation, transit system, town structure with neighborhood centers, and social equity through design as well as the economic benefits associated with smart growth.

Mayor Kennedy indicated that an article in the San Jose Mercury states that this is a wonderful resource for the City of San Jose to use in their planning process.

Council Member Sellers said that this was an impressive document. He felt that as the City of San Jose proceeds in the process of developing Coyote Valley, the City of Morgan Hill needs to try to impose itself in the process more than it has been, recognizing the sovereignty of San Jose and the right to make their own decisions. However, the impacts to Morgan Hill would be severe regardless of the well planned and well considered proposal as derived by the Greenbelt Alliance. The impacts of putting a city that is 1-3 times the population of Morgan Hill would be phenomenal. He stated that the City needs to play a broader role as the City of San Jose proceeds. He felt that the economy will be Morgan Hill's friend in this process as it was his belief that it would be 8-10+ years out before the reality of the economy will allow the City of San Jose to consider development. Even if it is 3-5 years out before development occurs, the City of Morgan Hill needs to do what it can to impose itself in this process. He felt that a lot of great ideas were presented this evening and that it is his hope that some of the ideas will be implemented.

Ms. Fitchen said that this is the background to the beginning of the process. She indicated that she sat on a technical advisory committee and tried to figure out how to leverage this position. She encouraged the City of Morgan Hill to leverage its influence on the task force. She agreed that the City of Morgan Hill would be greatly impacted with whatever takes place in Coyote Valley.

Council Member Carr said that he too attended the unveiling and that it was a good presentation. He felt that the preparation in the vision plan was great but that the preparation for schools was woefully inadequate. He noted that Coyote Valley is entirely serviced by the Morgan Hill Unified School District and the Gavilan Community College District. He noted that Gavilan College's plans are not represented in this plan. He stated that a city that will be larger than the Cities of Morgan Hill and Gilroy combined has placements of schools that are small and inadequate. The way that the school is laid out with adjacent parks, on transit corridors and open space is a great idea. He requested, as the vision moves forward, that the Greenbelt Alliance provides adequately for schools.

Ms. Fitchen said that it was possible that the school footprint would be smaller than a standard suburban school. She said that the whole philosophy of the vision would be to accommodate the needs of the new town within it's envelop. She said that it was her assumption that Sobrato High School will service Coyote Valley.

Council Member Carr indicated that Sobrato High School will be filled by the time a house is built in Coyote Valley. He indicated that Ms. Fitchen was an important member of the Measure P update Committee and brought a great force to that Committee. He noted that she also works with Mayor Kennedy on the Urban Limit Line Committee.

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Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: The City Council received the report. No action taken.

14. EXTENSION OF FIRE AND EMERGENCY MEDICAL SERVICES CONTRACT

City Manager Tewes presented the staff report. He indicated that Fire Chief Ben Lopes with Santa Clara County Fire Department was in attendance to address the Council. He stated that approximately 1.5 years ago, the Council directed staff to begin discussions with the two service providers who provide fire service to the community: South County through an automatic aide agreement and the Santa Clara County through the City's direct contract. He said that the County ran into some issues that affected their long term costs that made them cautious about making proposals. He indicated that these have now been resolved and that the costs are now predictable. Staff now has an initial proposal from the County which it believes forms the basis for potential negotiations leading to an extension of a fire services contract. He said that an option would be to enter into a formal request for proposal process as staff believes that the proposal from the County is a reasonable one; one that warrants negotiations. He stated that the City has been well served by the existing contract in many respects. He noted that 23% of the City's general fund goes toward fire protection. Therefore, implementation of the City's Fire Master Plan will be important to the City's budget planning as well as service planning for the community. He noted that the staff report summarizes the County's proposal. Staff raised a series of issues that it believes are important to discuss in negotiations with the County and the South County District.

City Manager Tewes said that staff believes that it should be the City's goal to try to reach agreement on the business terms of an extension of a contract by January 2004. He said that the Fire Master Plan acknowledges that the community is served by a contract and that much of the community is protected through automated aid agreements. The Fire Master Plan suggests that some of these provisions be codified in a contract. The issue of staffing levels is important in the proposal given by the County. The County proposes additional staffing levels at an additional cost to the City. The Fire Master Plan also indicates the need for additional staffing levels. He stated that it was important to discuss when and how to proceed with the additional staffing levels. The initial cost of the proposal also needs to be discussed. He said that the County's proposal does provide for additional staffing and suggests that it starts next fiscal year when the current contract would otherwise still be in place. This would result in an overlap with the current service contract and an extended contract to be discussed by the Council. He stated that the City would be interested in as long of an extension with reasonable terms as there are a number of uncertainties in the future. Also, to be discussed is the term of the contract. The staff report discusses the potential of repurchasing some of the fire stations and some of the physical assets that have been sold as part of the fire service extension. With the adoption of the recent development impact fee program, he said that there are opportunities for the County and the City that would result in a mutual financial benefit to pursue. The Fire Master Plan suggests that any contract extension includes service level standards. He requested Council discussion and direction on some of the policy issues.

Mayor Kennedy opened the public comment.

Fire Chief Lopes complimented the City Manager and staff on their analysis of the County's proposal. He felt that the report before the Council is fair and representative of the important issues that were discussed

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over the past year to eighteen months. He said that there were a lot of important issues that have surfaced; some resulting from the Fire Master Planning process and some from discussions. The County has had a contract with the City since 1995 and the County believes that it has been an excellent relationship for Morgan Hill and the Fire Department. He said that many of the individuals serving this community have been long term employees within the community both with the County Fire department since the contract and prior to the contract with the Morgan Hill Fire Department. These individuals are dedicated to this community who understand the unique response patterns and the streets that help provide a better level of service. He addressed the full depth and breath of services that is provided by the County as a fire provider, noting that the County is a full service modern day fire department. In the staff report, there were four alternatives identified to move forward with. He indicated that he would like to comment on two of the proposed alternatives. He noted that there is an alternative to pursue a single unified fire protection agency for the urban areas in South County. He stated that County Fire is 100% behind this alternative. The County felt that this area could be served by a unified fire service whether this was the County agency or some other form of fire protection in South County. Whether or not the City continues to contract with County Fire, he encouraged the Council to continue to look at a single fire service provider based on limited resources and that this is something that the County would like to be a part of. He said that County Fire would support the City's choice of another provider if they prevailed in the long term. The second alternative suggests negotiations with existing providers for an extension of services contract. He said that County fire would like to continue to do so.

Fire Chief Lopes said that some of the important factors in continuing negotiations revolve around staffing levels. As it relates to fire response, the County is responding between 8 to 9 individuals on a first alarm. In other areas served in the north county, there are 14 to 15 individuals responding on first alarm. He noted that there is disparity in the number of individuals sent to respond on the first alarm and that this has to do with population density, available resources, etc. He said that this is an important issue for fire service and the community to address. He noted that the staff report indicates that the County's proposal suggests that the increase in staffing recommended by the master plan be provided by staff in a county station with four persons rather than increasing the south county engine company staffing from 2 to 3 persons. He clarified that the County's proposal does not pit them against South County. It was his belief that South County staffing should be increased and that it is felt that until a fire station is built, additional staff could be added to the existing companies and provide a higher level of service. He said that one of the most important elements of the contract to both parties is cost containment. He said that the County is looking at alternatives to the existing formula. He noted that the existing formula provides for cost containment but that it is cost containment at a cost to County fire. Therefore, the County never has the opportunity to catch up with costs.

Fire Chief Lopes felt that it was important to structure the contract to where it is a win win for both parties and that there is protection for the City and the Fire department in the long term to be a viable service. Another element of the proposal is contained in the Master Plan that addresses service level standards. He stated that the County is adamant about service level standards. If County Fire is to be the City's long term fire service provider, he felt that County Fire should be accountable for what it is providing under the contract. If the City looks at other alternatives for fire services, he felt that the level service standards should be something that are bench marked so that the City understands the service levels that the County provides to this community. He stated that the County looks for economy of scales to help contain costs. He said that the cost of fire protection would increase significantly in the future due

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to labor costs and a growing community. This is an issue that will be faced by every community. He felt that cooperation in South County with Gilroy and the unincorporated areas could be a viable alternative through the County or through another provider to help contain the costs in the long term. He informed the Council that the unincorporated area between Gilroy and Morgan Hill is serviced by the South County Fire Protection District who contract out with the California Department of Forestry (CDF).

Council Member Sellers said that there may be a possibility that San Martin may become an incorporated area in the future and that there may be some possibilities in the near term.

Fire Chief Lopes said that these are important variables that the City needs to be informed on as this proceeds.

Mayor Kennedy said that it was his understanding that the South Santa Clara County Fire Protection District covers San Martin and provides some manpower to the CDF. It was also his understanding that the South Santa Clara Fire District has a station in San Martin and that there was another fire station southwest of Gilroy.

Fire Chief Lopes said that there is an entity that has geographical boundaries called the South County Fire Protection District. They do not have personnel on board but contracts for this labor force through CDF.

A representative with the CDF indicated that Station 1 is located at the Headquarters' facility on Monterey Road, Station 2 is located off of Masten Avenue, and Station 3 is located at the entrance to Bonfante Gardens. In addition to this, the Fire District has a CDF engine located in the Pacheco area that is staffed year round for response. He said that the South Santa Clara County Fire District has a contract with CDF for personnel and administration of their fire department. He said that the CDF administration is in full support of a unified protection for the South County area.

Council Member Carr inquired whether the idea of a South County regional area that includes Morgan Hill and the South County Fire Protection District but not be the City of Gilroy is feasible?

Fire Chief Lopes did not believe that fire protection has to be done altogether. However, one of the important things in putting together any consolidation would be to identify the service levels to be expected. With the existing resources, it needs to be determined whether services can be provided with the available resources.

Council Member Carr stated that it was encouraging to hear that two of the three entities are interested in a consolidated effort. If the City of Gilroy is not interested, he recommended that conversations regarding incremental steps be presented to that City.

No further comments were offered.

City Manager Tewes said that staffing levels for engine companies is an important issue to discuss. He said that CDF always provides at least 2 individuals per engine and occasional it is more than this number. He stated that Santa Clara County and all fire agencies have an automatic and mutual aid agreement. The Fire Master Plan suggests that the City contracts with South County to bring contractual

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obligations and responsibilities to allow South County to have additional staff resources because they respond to emergency incidents in the southern portion of the City.

Council Member Tate stated that the Council studied the usage patterns in detail during the Fire Master Plan update. He said that the volumes of calls out of the El Toro Fire Station are high in comparison to other stations. He noted that Fire Chief Lopes suggests that this issue needs to be addressed sooner rather than later, at the same time addressing the fact that the City needs a third station guaranteed in the southern part of town. He felt that there are several urgent needs that can be looked at separately or together that need to be addressed.

Mayor Kennedy noted that Fire Chief Lopes was not opposing the City's discussions with the South County Fire District.

Council Member Sellers said that staff has provided the Council with a variety of options for pursing fire protection services. He concurred that the City has had good fire service in the last few years through this contract and that it would make sense to proceed and would support staff's recommended action. He said that he would support the negotiation of a long term contract. However, the jurisdiction issue gives him pause to consider. He requested that staff return to advise the Council as to the climate of what might happen in Gilroy and San Martin in the interim to determine if it would make sense to pursue a longer term contract or whether it would be wiser to go for a shorter, mid term contract, understanding that there may be some economies of scale in future years.

Council Member Tate recommended that the contract be approached as a long term contract, making provisions for "what if" issues that would occur intermediate to this.

Council Member Chang noted that \$1.4 million has been set aside for fire service. In looking at the programs, it appears that another \$1 million per year will be needed in order to provide fire services.

City Manager Tewes clarified that the current contract cost in the 9th year in a 10 year agreement is \$3.7 million based on certain cost adjustment factors. He stated that the City has received a proposal from County Fire that addresses additional staffing levels beginning next fiscal year. With this additional staffing level, County Fire proposes a contract cost in the initial year of \$4.6. million. This would result in \$900,000 in additional costs next year, more than is being paid this year for a different level of service. Staff would like to talk about the level of staffing and the additional cost. A third factor is the adjustment that would be built into any contract for future increases. This is the County's proposal, indicating that staff is not asking that the Council accept their proposal. Staff is requesting that the Council allow staff to negotiate with County Fire.

Mayor Kennedy inquired whether there would be a benefit to investigating and discussing a regional fire plan without slowing down negotiations for an agreement with the City.

City Manager Tewes said that even if the consolidation of fire services is a good idea, this would take years to implement as it would take a while to develop consensus among the leaders in South County. This would require a vote of the people along with a lot of planning, implementation and transition. He stated that the extension of a service contract is not incompatible with a strategy to try to work on a longer

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range district.

Mayor Kennedy recommended that a letter be sent to the City of Gilroy and the community of San Martin to determine interest in a unified south county fire service approach without slowing down the negotiation process.

Council Member Carr recommended that the Council think about its strategy and how to approach Mayor Kennedy's recommendation. He agreed that this is the time to start discussions on a unified south county fire service approach but not to slow down the City's negotiations in anyway. He recommended that the Council think this through and put together a strategy before sending out a letter of interest to Gilroy and San Martin. He noted that there were four options presented by staff and that the Council was only discussing the two options raised by Fire Chief Lopes.

City Manager Tewes informed the Council that staff is recommending one of the options. Staff recommends that the City authorize staff to begin negotiations to extend the fire service contract. Staff could also begin the long range discussions for a unified fire district. If an agreement cannot be reached by the timeline suggested, staff would return to the Council and still have sufficient time to address other options.

Council Member Carr said that there were some bullet points presented by staff that were important to him. He said that the implementation of the fire master plan was important as well as the potential of the repurchase of land and fire stations as the infrastructure is important to the long term needs.

Mayor Pro Tempore Chang stated that the City also needs to find additional funding.

<u> Action:</u>

On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) <u>Authorized</u> the Negotiations with the Santa Clara County Fire Department to Extend the Current Service Contract Beyond June 30, 2005; and <u>Authorized</u> Negotiations with South County Fire District (CDF) Regarding Implementation of Fire Master Plan Recommendations.

15. WATER RATES

Director of Finance Dilles presented the staff report. He said that it is clear that a minimum of 2% water rate increase will be necessary by January 2004 in order to cover operating costs and to meet the minimum reserve levels specified by the Council. He said that the percentage rate increase is attributed to the perchlorate costs being incurred, higher costs associated with some projects, and higher operating costs. He indicated that the Santa Clara Valley Water District has increased the tax that is paid for personal water use from \$140 an acre foot to \$160 an acre foot as of July 2003, increasing the cost of buying water by 14%. In addition, the Water District projected the need to increase the cost of water for the next five years at an additional \$20 an acre foot. If these costs are implemented, it would result in the cost of water at \$240 an acre foot as opposed to \$140 per acre foot seen last year, doubling the cost of water within a five year period. Staff recommends that the Council accept the report and direct staff to return within 30 days with a more comprehensive analysis, explaining the details and indicating what the water rate structure should be in terms of the level of rates. He clarified that the Water Districts cost

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increase is attributed to its pump tax and not the water rate. He stated that the cost to the city translates to a 2.5% increase in cost that should be passed on to the rate payer.

Council Member Sellers inquired whether the City has any options in regards to the pump tax (e.g., protesting the pump tax rate increase). He further inquired as to the anticipated range of rates that can be anticipated for January 2004.

Mr. Dilles responded that the pump tax rate increase is the Water District's decision. He said that the City could provide input on the pump rate increase. With regards to the question relating to anticipated range of water rates, he stated that he would prefer to wait to respond to this question until he studies the figures.

Mayor Kennedy said that it appears that water rates will need to be increased significantly to accommodate the increase costs of water that is provided by the Water District as well as additional costs to handle the perchlorate treatment problem.

Mr. Dilles informed the Council that staff has seen the City's operating costs and some of the capital costs be higher than what was original projected in the study.

Council Member Carr inquired whether the City knew about the Water District's increase in pump tax at the time the City went through the process with the consultants and public workshops about the water fees.

Mr. Dilles responded that staff knew that the Water District were discussing potentially higher rates but that it was not known if they were to be implemented. Staff did not want to propose a rate increase if it was not necessary. Therefore, staff took the cautious view on what the inflation would be and kept it at 3%. Staff did receive feedback at the latter part of the study about the discussion and proposal to increase the pump tax. Staff did not want to act in advance to the Water District's action. Staff wanted to review their recommendations and the proposed tax increase to respond to whether the pump rate increase was justifiable.

Council Member Carr indicated that the South County Regional Wastewater Authority (SCRWA) protested the water pump rate increase. The Water District attended a SCRWA meeting where SCRWA made a different presentation to them. He said that the Water District's pump increase would be a disincentive for recycle water that is being pushed by SCRWA for agricultural users, golf courses, and other users. This would become a disadvantage because the tax rate increases at a different amount and would increase for recycled water.

Mayor Pro Tempore Chang stated that she was at a quarterly meeting attended by all cities representatives and that there was extensive conversation about the rate increase. She indicated that cities protested the pump rate tax increase proposed by the Water District. It was pointed out that the north county pays a higher rate versus South County. She did not recall seeing the \$260 rate as SCRWA tried to cap the amount. She said that the SCRWA Board will need to conduct a workshop as the Water District is talking about placing additional monies, or a facility for reclaimed water/future capacity inside the treatment plant.

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Mayor Kennedy opened the floor to public comments. No comments were offered.

Action:

On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) <u>Accepted</u> the Finance Director's Report Concerning Water Rates; and <u>Directed</u> Staff to Return within One Month with a full Analysis of Water Revenues and Costs; and with Proposed Water Rates Through 2007.

Council Member Carr stated that all Council members have received some input from the public about the water rates. He said that if staff is going to return with the idea of increasing water rates, the Council should also discuss strategies for decreasing water usage and conservation, including educating the public about these issues. He noted that the Council discussed this a couple of years ago when it discussed the City's energy strategy a how to decrease its energy uses.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

CLOSED SESSION

Agency Counsel/City Attorney Leichter announced the closed session items that were continued from earlier this evening.

RECONVENE TO CLOSED SESSION

Chairperson/Mayor Kennedy adjourned the meeting to Closed Session at 9:30 p.m.

RECONVENE

Chairperson/Mayor Kennedy reconvened the meeting at 9:40 p.m.

CLOSED SESSION ANNOUNCEMENT

Agency Counsel/City Attorney Leichter announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Chairperson/Mayor Kennedy adjourned the meeting at 9:41 p.m.

MINUTES RECORDED AND PREPARED BY:

Submitted for Approval: October 15, 2003

CITY OF MORGAN HILL JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES – OCTOBER 1, 2003

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 5:03 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Chang, Sellers, and Mayor/Chairperson Kennedy

Late: Council/Agency Members Carr, Tate (arrived for Closed Sessions)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

1.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Legal Authority Government Code 54957

Public Employee Performance Evaluation: City Attorney

Attendees: City Council, City Attorney, John Shannon

2.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

3.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8

Property: 215 Tennant Avenue, APN: 817-04-002

Negotiating Parties:

For City: City Manager, Director of Public Works, and Attorney Gale Connor

For Property Owners: Robert and Teresita Carrasco and Bruce Tichinin

Closed Session Topic/Under Negotiation: Price and Terms of Payment

4.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8

Property: 95 Tennant Avenue, APN: 817-04-008

Negotiating Parties:

For City: City Manager, Director of Public Works, and Attorney Gale Connor

For Property Owners: Marko and Klara Gera
Closed Session Topic/Under Negotiation: Price and Terms of Payment

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5.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8

Property: 145 Tennant Avenue, APN: 817-04-008

Negotiating Parties:

For City: City Manager, Director of Public Works, and Attorney Gale Connor

For Property Owners: Joseph Hernandez, as trustee; et al Closed Session Topic/Under Negotiation: Price and Terms of Payment

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 5:05 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:05 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Mayor/Chairperson Kennedy invited former Mayor/Council Member John Varela to lead the Pledge of Allegiance.

PRESENTATIONS

Sal Murillo, Santa Clara County Department of Public Health, introduced John Varela a member of the County's Advocacy Group and Dolores Alvarado who will share in the presentation this evening. He indicated that the County has a two-year contract with the State of California to perform a workplan that involves community advocacy work in three communities, including Morgan Hill. He addressed the Tobacco Prevention and Education Program and the results of a survey conducted. He indicated that the County uses subcontractors such as Community Solutions to conduct community education to reduce youth access to tobacco products. He said that Morgan Hill's police department conducted an under cover purchase survey in January 2002, noting that 8 out of 18 stores sold tobacco products to minors.

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Dolores Alvarado, resident and mother, addressed the role that advertisement plays on the sale of tobacco. She said that it is clear that tobacco use is a health issue relating to cancer and other health problems. She stated that it is known that tobacco advertisement and promotion often targets children and youth. Also, 60% of the tobacco industry's budget is dedicated to advertising. She requested that the City take the following actions: 1) enforce the current laws on the books by limiting window advertisement to the 25% limit; 2) strengthen ordinances to counter the proliferation of advertisement, including tobacco by banning all forms of portable signs; 3) ban all forms of tobacco from self service displays; and 4) consider licensure as a possible measure.

John Varela stated that the enforcement of tobacco control would deter violators and send a message to the public that the community leadership believes that its policies are important. He said that a number of published studies have shown that enforcing laws that restrict tobacco sales to minors and educating merchants reduces illegal sales of tobacco. It is felt that fees from licensing tobacco vendors can be used to fund enforcement activities and to develop/maintain active programs. He felt that education programs by federal, state and local authorities are necessary to build support among retailers for the enforcement of sales restrictions. These programs should include discussion of tobacco's health affects.

Nayeli Ceja, student, informed the Council that it is easy for youth to get a hold of tobacco products and cigarettes. She said that this worries her because she has younger brothers who may get a hold of these products. She requested that the City make it harder for youth to get a hold of tobacco products.

Cynthia McKenza, with the Federal Emergency Management Agency, presented a plaque to the City on behalf of the National Flood Insurance Program to recognize the City's achievement in attaining a class 7 rating in the Community Rating System. She indicated that the Community Rating System is a program that recognizes and rewards communities for exceeding Flood Plane Management Standards in a vast number of areas such as open space preservation, storm drain and its maintenance, and public outreach. She indicated that for every 500 points that a community receives there is a corresponding 5% deduction in the annual premium that an individual would pay for flood insurance. She stated that Morgan Hill received over 1,500 points (15%). This means that Morgan Hill is saving over \$20,000 a year. These savings can be attributed to the great work of the Public Works Department. Should the City be able to achieve a class 6 rating, she would return to present the City with another plaque.

Council Agency Member Chang stated that a couple of staff members did a great job in the incorporation of an art project at the Taste of Morgan Hill at the Community & Cultural Center. She thanked Director of Public Works Ashcraft for allowing his staff to conduct such a creative job (Jay Jaso and Rosemary Rideout).

CITY COUNCIL REPORT

Council Member Carr congratulated the Chamber of Commerce and all the volunteers who made the Taste of Morgan Hill a successful event, noting that it takes a community effort to make this a successful event. He reported the following: 1) The Council will be conducting its first discussion on the update to Measure P. He stated that the Measure P update was a process facilitated by a task force led by Council Member Tate that took several months to put together to what he believes is a good product. He said that subsequent hearings will be important for the community of Morgan Hill to come

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before the Council, asking important questions. 2) The Economic Development Subcommittee (EDS) is a subcommittee that he serves on, along with Council Member Tate that is moving forward with the Downtown Request for Proposal process authorized by the City Council. The EDS has been challenged to come back by October 15, 2003 with the first category of quick hitters whose projects can receive City assistance to move them forward. He said that even though there are projects that would take a little longer to succeed, they are ones that would be exciting to the community, especially the downtown area for the implementation of the newly updated Downtown Plan. 3) He stated that he serves on the South County Joint Planning Advisory Committee. He indicated that the Committee will be holding its next meeting on October 9 and that a number of reports will be presented at this meeting. One report will be on the future of South County as the San Martin incorporation efforts, through the San Martin Planning Advisory Committee, will come before this Committee and address their efforts in moving forward with possible incorporation of the San Martin area. The City of Morgan Hill will address the Urban Limit Line. The latest update on the Urban Limit Line will be presented by Mayor Kennedy and Mayor Pro Tempore Chang. He said that the Chair of this committee, Supervisor Don Gage, will be presenting an update on VTA, including possible reductions to transportation services for South County.

Mayor Pro Tempore Chang indicated that the South County Regional Wastewater Authority (SCRWA) will be conducting a workshop to discuss short and long term goals, particular, how to discharge wastewater. It is her hope that the City Council will hold a meeting prior to the scheduled SCRWA workshop. She indicated that there were two issues: 1) how the discharge is going; and 2) that the Water District may be interested in a treatment facility, to be owned by them, at a cost of \$2 million for reclaimed/treatment of water. She felt that the Council needs to discuss these issues.

Mayor Kennedy stated that the Urban Limit Line/Greenbelt Committee held a meeting last Monday night. The Committee is now wrestling with the establishment of a greenbelt around the City. He said that progress has been made in the establishment of an urban limit line/ultimate growth boundary for the City on the west, north and the northeast but that the southeast corner will be a lot more difficult.

CITY MANAGER REPORT

City Manager Tewes indicating that a significant milestone occurred with the development of the aquatics complex. This milestone is the installation of a web cam on the City's website that can be viewed on the city's web page that will allow individuals to view a live video feed of the construction taking place at the aquatics complex on a daily basis.

CITY ATTORNEY REPORT

City Attorney Leichter informed the Council that there may be individuals who would be waiting for item 13 to be called relating to conducting a hearing and considering the adoption of a resolution of necessity for several properties along the Tennant Avenue widening project. She indicated that staff has received two written comments that are fairly substantive in the past couple of days. Based on these written comments and the need to evaluate these comments, staff would be requesting that this item be pulled from the agenda as staff needs to conduct additional research. She indicated that the Council may wish to consider item 13, out of turn, to release those individuals in attendance from sitting through a lengthy meeting.

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PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Lanette Smith inquired why the City of Morgan Hill does not offer CPR or first aid classes to its residents. She indicated that she had to go to the City of Gilroy and pay them money to receive CPR/first aid certification. She felt that every resident should have these classes offered to them in their own community, promoting a better economy and possibly save lives.

City Manager indicated that CPR and first aid classes are offered in the community.

No further comments were offered

Action: Mayor Kennedy **moved** up agenda item 13.

13. <u>CONDUCT HEARING AND CONSIDER ADOPTION OF RESOLUTION OF NECESSITY FOR PROPERTY ACQUISITION FOR PROPOSED TENNANT AVENUE</u> WIDENING

City Attorney Leichter indicated that it is staff's recommendation that this item be removed from the agenda. This item will be renoticed and given appropriate notification when staff brings this item back for Council consideration.

<u>Action:</u> On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0), **Tabled** this item.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the Council/Agency Board unanimously (5-0) Approved Consent Calendar Items 1-10, as follows:

1. AQUATICS COMPLEX LEEDS CERTIFICATION

<u>Action:</u> <u>Information Only</u>, Staff Will Report Back To Council Later During The Construction Period Prior To Deleting Leeds Certification.

2. RESOLUTION OF INTENT TO VACATE A PORTION OF BARRETT AVENUE AND SET TIME AND PLACE FOR PUBLIC HEARING – Resolution No. 5721 Action: 1) Approved Resolution No. 5721, Intent to Vacate a Portion of Barrett Avenue, Thereby

Setting October 15, 2003 at 7:30 p.m. in the Council Chambers as the Time and Place for the

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Public Hearing; and 2) <u>Directed</u> the City Clerk to Publish the Resolution of Intent as Required by Law.

3. <u>ACCEPTANCE OF THE DOWNTOWN TRANSIT CENTER AT-GRADE PEDESTRIAN</u> PROJECT

<u>Action:</u> 1) <u>Accepted</u> as Complete the Downtown Transit Center At-Grade Pedestrian Crossing Project in the Final Amount of \$129,436; and 2) <u>Directed</u> the City Clerk to File the Notice of Completion with the County Recorder's Office.

4. <u>ACCEPTANCE OF SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT, PHASE II 2002-2003 PROJECT</u>

<u>Action:</u>1) <u>Accepted</u> as Complete the Sidewalk, Curb & Gutter Removal and Replacement, Phase II 2002-2003 Project in the Final Amount of \$61,253; and 2) <u>Directed</u> the City Clerk to File the Notice of Completion with the County Recorder's Office.

5. <u>AUTHORIZE AGREEMENT TO INSTALL A FIBER OPTIC LINE TO THE NEW POLICE FACILITY</u>

<u>Action:</u> 1) <u>Authorized</u> the City Manager to Prepare and Execute an Agreement, Not to Exceed \$35,000, to Install Fiber Optic Line and Two I-Net Hubs to Nearest City Hub for the New Police Facility, Subject to City Attorney Review; and 2) <u>Approved</u> up to a 15% Increase (\$5,250) in the Agreement for Unforeseen Conditions.

6. <u>SUBDIVISION APPLICATION SD-03-06: CENTRAL-CENTRAL PARK</u>

<u>Action:</u> <u>Took No Action</u>, Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.

7. <u>SUBDIVISION APPLICATION SD-03-07: SUNNYSIDE-QUAIL CREEK</u> DEVELOPMENT

<u>Action:</u> <u>Took No Action</u>, Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.

8. <u>APPROVAL OF RESOLUTION TO IMPLEMENT THE PROVISIONS OF SECTION</u>
(414)(h)(2) OF THE INTERNAL REVENUE CODE WITH THE BOARD OF
<u>ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEE'S RETIREMENT SYSTEM</u>
Action: Adopted Resolution No. 5722.

9. ADOPT ORDINANCE NO. 1635, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1635, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 3.56.130 of CHAPTER 3.56 (Development Impact Mitigation Fees) of TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING EXEMPTION OF CONVERSIONS OF RESIDENCES TO COMMERCIAL USES AND/OF

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ADDITION OF LIMITED INCREASED SPACE IN STRUCTURES LOCATED IN CC-R DISTRICT FROM DEVELOPMENT IMPACT MITIGATION FEES.

10. ADOPT ORDINANCE NO. 1636, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1636, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 12.02.190 (Exceptions) OF CHAPTER 12.02 (Street and Sidewalk Development) OF TITLE 12 (Streets, Sidewalks and Public Places) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING EXEMPTION OF CONVERSIONS OF RESIDENCES TO COMMERCIAL USES AND/OF ADDITION OF LIMITED INCREASED SPACE IN STRUCTURES LOCATED IN CC-R DISTRICT.

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

11. <u>DEVELOPMENT AGREEMENT, DA-03-07: CENTRAL-CENTRAL PARK</u> – *Ordinance No. 1637, New Series*

Planning Manager Rowe presented the staff report, recommending approval of the development agreement.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) Waived the Reading in Full of Ordinance No. 1637, New Series, Approving DA-03-07: Central-Central Park.

Action: On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council Introduced Ordinance No. 1637, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-07: CENTRAL-CENTRAL PARK (APN 726-27-104 & 105) by the following roll call vote: AYES: Carr, Chang, Sellers, Tate, Kennedy; NOES: None; ABSTAIN: None; ABSENT: None.

12. <u>DEVELOPMENT AGREEMENT, DA-03-08: SUNNYSIDE-QUAIL CREEK</u> DEVELOPMENT – Ordinance No. 1638, New Series

Planning Manager Rowe presented the staff report, recommending Council approval of the development agreement.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

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Action:

On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) <u>Waived</u> the Reading in Full of Ordinance No. 1638, New Series, Approving DA-03-08 for Application MP-02-24: Sunnyside-Quail Creek.

Action:

On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council <u>Introduced</u> Ordinance No. 1638, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 03-08 FOR APPLICATION MP 02-24: SUNNYSIDE-QUAIL CREEK. (APN 767-29-006) by the following roll call vote: AYES: Carr, Chang, Sellers, Tate, Kennedy; NOES: None; ABSTAIN: None; ABSENT: None.

City Council Action

OTHER BUSINESS:

14. <u>UPDATE OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P)</u>

Planning Manager Rowe presented the staff report, recommending that the City Council receive public testimony, provide comments to staff by minute action, and continue the review of the proposed amendments to the Residential Development Control System (RDCS) to the October 15, 2003 Council meeting. He addressed the proposed changes to the initiative. He indicated that a voter survey was conducted to gauge voter support for the most significant amendments proposed by the Measure P Update Committee, conducted by the San Jose State University Foundation. He said that approximately 608 residents were contacted and that overall, the survey suggests that Morgan Hill voters are supportive of the extension of Measure P and many of the proposals to the update. Two of the areas where the voter response was not supportive were: 1) concentration of development in the downtown; and 2) the elimination of the east/west split. At the community workshop, significant comment were received about the provision which limits development potential of a particular area, specifically properties which were brought into the urban service between March 1, 1990 and the effective date of Measure P (1990). He indicated that there was also a petition received from residents in the Fountain Oaks area that requested that provisions be retained and extended through the extension of the RDCS.

Planning Manager Rowe indicated that the proposed initiative is divided into three sections: Section 1 includes the findings and purposes of the initiative; Section 2 includes amendments to the proposed General Plan; and Section 3 includes amendments proposed to the RDCS. He informed the Council that there are three significant changes that are proposed to be included in the update that were not previously reviewed by the Council. The first change relates to school impacts. He stated that Senate Bill 50, the School Facilities Act, significantly limits the City's options regarding mitigation for school impacts. The second change clarifies the intent of the single dwelling unit exemption and incorporates the provisions that are consistent with Council policy on how one unit dwellings are defined. The third change relates to the proposal of urging community members to extend the provisions that limits the level of development of properties which were included in the urban service area after March 1990. He indicated that the Planning Commission is recommending changes to 8 of the 24 original proposed

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amendments, noting that there was disagreement with two of the changes: Sections 7 and 11. He stated that the Planning Commission is recommending some changes to Section 11 dealing with desirable infill to provide more flexibility. The Planning Commission also recommends that the period for the installation of public improvements considered as benefits as a requisite for inclusion into the city within a five-year period as opposed to the four-years as originally recommended. He informed the Council that the final version of the proposed changes went before the Planning Commission on September 9 and September 23. The Planning Commission is not recommended any substantive changes and that those changes are being recommended are shown in italics in the document.

Council Member Tate, Chairman of the Measure P Update Committee, stated that he would walk through every area being recommended for changes that are significant and may generate discussion.

- Take the population cap from 38,800 in 2010 to 48,000 in the year 2020 to be in line with the General Plan and everything that the Council has endorsed all along. He noted that the population cap was one of the driving forces for updating Measure P to begin with.
- Simplify the RDCS process in terms of staff work required. Instead of requiring an annual competition that can award up to two-years of allocations, the proposed amendment states that it can be either an annual competition or a biannual competition. If a biannual competition, allocations can be made into a third year. It is the intent to give the City the flexibility of not having to hold competitions every single year.
- It was found that the allocations were front loaded. In the beginning years of Measure P, the City was able to allocate 270-280 units. Towards the end, the City could only allocate less than 100. The Committee wanted to make a smooth slope in terms of the allocations out to the year 2020. The Committee made some adjustments regarding how the City counts previously awarded allotments that have not yet been built in order to achieve a "smoothing" affect and to have a more continuous growth.
- Recommend the elimination of the east/west split. He noted that there are far fewer vacant lands available on the west side of Monterey Road. Having 1/3 of the allocations being forced onto the west side was allowing units to win the competition with much lower scores than any projects on the east side of Monterey Road. Where there is vacant land on the west side, it is usually far from north/south of town, getting away from one of the City's goals to get more central development from the City's core. He said that there was long discussion in meetings where this issue was discussed. However, the final recommendation of the Committee was the elimination of the east/west split in order to have the allocations distributed more evenly.
- Proposed amendments to be in sync with the Downtown Plan as well as the future greenbelt study not yet completed. The proposed amendments encourages downtown set asides and makes it a requirement for the first few competitions through the year 2010. After this time, development in the downtown will be optional, but encouraged.

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- A recommendation that would make provisions for the three fully developed areas located within the City that are already receiving services be annexed without counting their population against the population cap for the City. These areas include Holiday Lakes Estates Unit 1, Casa Lane and El Dorado III. He said that including this language into the measure caused a lot of updates to the measure and includes new verbiage in the measure to accommodate this objective.
- The recommendation of a vertical mixed use project. There is provision to award up to 10 vertical mixed use units per year on a first come, first served basis. A vertical mixed use project would consist of residential units being constructed upstairs with retail or commercial downstairs. If applications are not received, the units can be accumulated up to a maximum of 20 allotments. However, only 15 can be allocated in any given year. This would encourage what the Downtown Plan was trying to achieve. It is not proposed to limit the vertical mixed use to the downtown. However, it was felt that the downtown would be the natural place as it is not expected to see vertical mixed uses proposed elsewhere in the community.
- Tighten the public benefit for desirable infill. He stated that there are provisions for annexing up to 20 acres or less into the City if they meet certain criteria. One of the criteria would be that there has to be some public benefit to the annexation. It is recommended that the City realizes the public benefit and that the property not just sit vacant after annexation whereby, the City never realizes the public benefit. A provision is being recommended that the City wants to realize the benefit whenever property develops or within five years, whichever occurs first.
- There were some minor adjustments to the point scores. The Committee recommends increasing the point scoring from 5-10 for public safety; decreasing the points under the Natural & Environmental category by 5 points; and the addition of a new 10 point category that addresses livable communities, smart growth concept, and a subjective measure of project excellence. He said that the maximum point for each category is defined in the measure itself but that the actual criteria that makes up these points is a subject that has been debated. He indicated that committees have been formed in prior years consisting of Planning Commissioners and community members who revisit the criteria every year to make sure that they are up to date and reflects what the community wants. He stated that the measure only decides what these categories are and the total number of points to be awarded for each category.
- There is a requirement in Measure P to meet a minimum score, noting that the minimum score varies depending in which category a developer is competing in (e.g., single family detached homes, attached homes, etc.). The Committee set the minimum passing scores a little higher to confirm to what the City's experience has been. He indicated that the City has not received applications with very low scores but that it is being proposed that there be a minimum score, setting the bar higher.

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- Adjustment to the award language to provide a little more flexibility and to conform to current practices. To follow the language contained within the measure would require that the City conduct a sequential total score allocation to the winners. This does not work when you try to balance the number of units that the various developers are requesting based on the number of allotments available. He noted that it has been the City's practice to dip into allocations available
- He stated that custom projects have been a problem, noting that not many applications have been submitted for these set asides. However, whenever the City awards allotments to custom lot projects, it takes longer than the couple of years allowed to develop. The Committee recommends the addition of two years, extending development to 24 additional months before the developer has to commence construction for custom lot projects.
- Adjustment to the core area used to determine orderly and contiguous growth. He stated that the core area had been a broad area, extending from Madrone to Tennant Avenue. The Committee proposes to tighten the core area to conform to the Downtown Plan and the nature of smart growth in downtown areas. The core area has been defined north to Wright Avenue, south of Cosmo, east to Butterfield Boulevard, and west to Del Monte Avenue. This results in a more constricted core area.
- Established compatibility and synergy with the Downtown Plan and the Urban Limit Line.

Mayor Kennedy complimented the Measure P Update Committee for a long and difficult process. He understood that there were a lot of tough/controversial issues that were addressed and resolved.

Council Member Sellers felt that an outstanding job has been done and that he was pleased that the Downtown Plan elements were encapsulated. He understands that the vertical mixed use is a new concept and stated his support of the concept. He was pleased that the Committee recommends vertical mix use where residential can be located above commercial. He felt that this was a concept that makes a lot of sense in the core area. He inquired whether the City would preclude the development of a vertical mixed use that is only viable at 18+ residential units. He inquired how the Committee arrived at the number and what would be the mechanism to modifying the maximum number, if there is a need to do so.

Council Member Carr stated that the vertical mixed use was a consensus building item among the Committee. He indicated that the Committee consisted of a broad coalition of individuals throughout the community with varied interests at the table. This Committee spent a considerable amount of time working on this product and worked well together. He stated that this was an area where consensus was one of the driving factors toward arriving at the numbers. However, he felt that a lot of the recommendations had to do with the realities of where a vertical mixed use project would develop in Morgan Hill. He felt that vertical mixed development is limited to the downtown area and that even within this area, would be limited. If a project only penciled in with 18 units, the developer has the ability to develop based on the way the RDC is structured to carry over allotments. He did not believe that anyone expected that this would be a category where there would be a stampede of applications. He

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felt that vertical mixed use would naturally allow flexibility because of the limited nature of applications that would be competing within this category.

Council Member Sellers stated that the product that would be developed in the downtown area should be different from the kinds of housing that would develop in other parts of the City such as transit oriented development or a livable community concept. He stated that it did not sound as though the City would be restricting its ability to define a different set of criteria for the downtown area in terms of architectural features or any other criteria. He inquired whether the City would be restricting itself in anyway in the development of mixed vertical use projects that can be foreseen at this point. He wanted to make sure that there is flexibility within the criteria to allow development of vertical mixed housing in the downtown.

Council Member Tate said that although the total points and guidelines are set within the measure, the criteria is reviewed every year and adjusted, as needed. He noted that the draft measure sets the maximum size of a mixed use project as 15 to be eligible for this set aside. If a project is larger than 15 units, it would need to compete under a different set aside.

Council Member Carr said that although there is a set aside for the downtown area, the criteria should not be any different for the downtown. He said that the uniqueness of the downtown will work its way into getting points that other projects cannot achieve. He said that with the new proposed category of livable community, adjustments of other points, tightening up the core, and making it an important aspect in the competition would help facilitate vertical mixed use development. He said that tightening up of the core was the trade off for eliminating the east/west split and that it was a valuable tradeoff in this update.

Mayor Kennedy inquired whether there was a new formula being proposed to flatten the curve versus having the allocations being front loaded.

Council Member Tate said that the Committee is not suggesting counting the houses already allocated and not yet built. This went a long way to front loading the number of allocations available in a given year.

Mayor Kennedy said that for some time there has been some confusion with the terms "allotments" and "allocations." He indicated that he sees the term "allotment" being used in the front part of the measure and inquired if this was the term to be used versus the term "allocation." He inquired whether the Committee discussed the City Council appeal process. He noted that the only change that can be made by the Council is changing the point evaluation and not the allotments.

Council Member Tate indicated that there was a lot of discussion about these words but that he did not go through the draft to make sure that the wording is consistent. He further noted that the allotments are approved by the City Council.

Council Member Carr stated that the issue of the appeal came up in the most recent round of Measure P appeals. He noted that the Council considered the appeals after the Committee concluded its meetings.

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Therefore, the Committee did not have the benefit of going through the experience of the recent appeal hearings for consideration.

Mayor Kennedy opened the floor to public comment.

Chuck Dillmann offered the following questions: He inquired whether the 48,000 population cap to 2020 was part of an integrated assessment of the City and its needs. Does the 48,000 population support the industrial growth plan that is needed to support the City's financial growth? Is there a 10-year financial plan that matches this? How does the 48,000 population cap match with the City's infrastructure? Will the 48,000 population require a new sewer plant or could a new sewer plant accommodate a population of 60,000? He felt that the phasing of the population would be dictated by City personnel, including police. He felt that the 48,000 population was one of the City's extrapolation of past history. He stated that the new library is proposed to be a 40-year library, sized for 50,000 individuals, noting that the library service area goes up to San Jose and down to San Martin. Therefore, he did not believe that this was consistent. He noted that the vertical mixed use appears to encounter a penalty on points as he felt that the vertical mixed use may be the best situation for a lot of areas in town. He noted that the Council discussed taking in certain development. If this is a plan to control population growth as opposed to an infrastructure plan, the Council could take in any existing development without factoring it into the 48,000 population.

Ralph Lyle indicated that he served on the Measure P Update Committee. He noted that a question was raised about the vertical mixed use and where the 15-unit limit came from. He stated that he was the source of the paragraph relating to vertical mixed use. He said that there was a planning commissioner who was interested in projects that would develop existing buildings (e.g., 2-6 units). This planning commissioner felt that there was a problem in trying to sync mixed use projects with other uses. The emphasis on mixed use development would be on a first come, first served basis for small projects, similar to the small project category seen today. Through the course of Committee meetings, the 6-units were increased to 15. He felt that there was a notion that as a mixed vertical use projects got to a size that exceeded 15 units, they should fall under a different set aside and not be included with the first come, first serve set aside as it would now be considered a large project. He stated that this compromise was a difficult one for the Committee.

Regarding the population adjustment, Mr. Lyle said that in the past, there were a number of sources of error as to why the City ended up over allocating in the beginning of Measure P. He noted that there were a certain number of units built outside of the RDCS. These are predictable and could be subtracted out when reviewing the allotments. The other errors came out because the formula was strictly based on the Department of Finance estimates. In the past, when there were bad times, the back logs of unbuilt units got large and were not accounted for. He indicated that the changes included in the measure would take the back log into account in order to remove a number of sources for error. He said that there are some things that can take place that could introduce errors, but that it is hoped that the numbers would be tracked closer. He said that staff would be working on this to try to make the numbers more precise. He indicated that the 48,000 population was based on the General Plan, noting that this was a very comprehensive study to address the City's needs of housing and jobs.

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Mayor Kennedy requested that Mr. Lyle respond to the comment made by Mr. Dillmann about the housing control not being balance based on more industry causing more pressure for housing.

Mr. Lyle stated that the General Plan had the best prediction it could of what is likely to happen with industry and how this compares to jobs and goals for the ratio.

Mayor Pro Tempore Chang stated that she did not want to front load the measure as the City would exceed 48,000 in the sixth year. She said that if you look at the 48,000 population number and the way the City is growing, it will just meet ABAG's requirement. She stated that she was comfortable with the numbers as the City's numbers correspond with ABAG's number as they increased the jobs projection and decreased the housing needs.

Mayor Kennedy said that for many years, the City has had a housing/jobs imbalance as there were more housing units than there were jobs. Therefore, the City was not concerned about placing a limit on industrial growth. As the City has successfully brought in more businesses and more jobs, the City is now closer to a jobs/housing balance.

Council Member Carr said that in the three years the City went through the General Plan Update, the City took these issues into account. He stated that the ratio of acreage currently zoned for residential versus industrial and other uses is based upon the concerns relating to the jobs/housing ratio. He said that one of the things that has been beneficial about this Measure P update is that a lot of items were tied together. He said that the City is trying to make this RDCS update work with the General Plan, taking into account the updates to the Downtown Plan, leaving out specific areas that will come out of the urban limit line. Another consideration taken into account was the fact that the proposed amendments would help the City's housing element get approved. The Committee took into account other work that has occurred in the city, incorporating sections of other documents within this document.

Council Member Tate clarified that the 48,000 population came out of the General Plan. He stated that the rate of growth to 48,000 would be fractionally a percentage lower than the rate of growth to the 38,800 population at year 2010. He clarified that vertical mixed use projects are not competing for points as this set aside would be on a first come, first served basis and that a vertical mixed use only needs to achieve the minimum number of points. Therefore, the City is encouraging vertical mixed use projects.

Mr. Lyle said that there were a number of changes made that should benefit vertical mixed use (e.g., natural environmental points were reduced, will benefit from the orderly contiguous changes). He said that there were many changes proposed that would benefit the Downtown Plan where most of the mixed used projects would develop.

Rocke Garcia, Glenrock Builders, stated his objection to the elimination of the east/west split. He recommended that the Council adopt a measure that would lessen the east/west split to approximately 15%. Allowing houses to be built on the west side by a certain percentage would spread housing throughout the community. He agreed that it has been easy for projects to be awarded units on the west side of Monterey Road as it has been only he and Mr. Schilling who were competing for development on the west side. It was his opinion that the way the measure has been drafted, the east side would

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dominate even though the core area has been constricted. He requested that the Council consider amending the east/west split in order to guarantee some homes being built on the west side by setting aside allotments to west side development. He said that his Capriano project is a successful project thus far. If this was to be a new project, he would not be able to score high enough to continue this project.

Mayor Kennedy inquired where a change would be made in the draft RDCS language to address Mr. Garcia's request for 15% west side, set aside recommendation.

Mr. Garcia referred the Council to page 182 of the agenda packet where a possible amendment could be made.

Council Member Tate stated that the Committee wanted to see the current projects underway completed. The Committee felt that the criteria contained enough flexibility to give additional weight to on going projects to make sure that they are completed. The Committee felt that this was the way to address Mr. Garcia's concern rather than retaining the east/west split.

Mr. Garcia understood that the proposed amendments would allow on going projects to continue. His concern addressed new projects on the west side as they have a tough time competing.

Council Member Carr agreed that emphasis was placed on completing on going projects. When it comes to new projects, it is a competition and that the highest scoring projects would receive the allotments.

Mayor Kennedy noted that under the current Measure P, completing on going projects is for a limited time frame that would eventually go away. Yet, the proposed amended RDCS would last many years longer. He wondered whether this was a valid argument.

Council Member Tate said that the argument presented by Mr. Garcia to the Committee was completing his on going project. He said that the Committee recommended provisions for on going projects and to have a level playing field for any project proposed within the City.

Mr. Garcia agreed with the level playing field concept. However, he felt that the level playing field will end up being concentrated in one area and would not spread new housing throughout the community.

Mayor Pro Tempore Chang felt that the Council was changing the scope of Measure P, noting that there seems to be a greater focus on a downtown competition.

Council Member Carr said that there was emphasis placed on the core of Morgan Hill, noting that this is not a change. He said that within the language of Measure P there is an emphasis to the core and contiguous development. He indicated that the City has allowed this emphasis to be flexible over the years. He said that it was not easy to eliminate the east/west split but that the committee wanted to recapture the importance of building in the core area and having contiguous development, avoiding sprawl and building on the outskirts of the City. The relationship to the core was important and not whether development occurred on the east side or west side of town.

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No further comments were offered.

Mayor Kennedy addressed Section 18.78.130, the appeal procedures. He noted that the last sentence states that "The Council may affirm or modify the allotment evaluation and its decision shall be final and conclusive." He indicated that the Council recently went through an appeal process with a couple of projects. An argument was made that the Council could not change the award of allotments but only change the points. He recollected that the Council recommended that the allotments be changed as a result of the appeal.

Council Member Tate indicated that the Council approves the allotment upfront prior to conducting a Measure P competition.

Planning Manager Rowe stated that the number of allocations for a given competition are established by the Council prior to the competition and that the Council also determines the different set aside categories. To include an appeal of the distribution of allotments at the Council level would require that the Council look at the entire distribution and not just the appellants' application because there are many different factors that go into the evaluation process, as well as scoring the projects. There is also the consideration that a certain number of allocations have to go to small projects and the other identified set aside categories, including set asides for ongoing projects. He said that there are different factors that weigh into how the allotments are distributed as well as the instructions that the Council provides prior to each competition year. If the Council is going to consider appeals and award allotment, the Council would need to take on the evaluation process, review, score, and rank all projects to determine which projects would receive the allocation, noting that this is a lot of work.

Mayor Kennedy inquired whether the Council has the authority to change the actual award of allotment.

City Attorney Leichter responded that under the current Measure P, the Council does not have the authority to award allotments. She indicated that Section 18.78.130 has always been interpreted by staff and previous councils to refer to the appeal of point scores.

Mayor Kennedy stated that it was his understanding that allotments and allocations have the same definition.

Planning Manager Rowe indicated that the language states that you can use the term "allotment evaluation." He said that the allotment is based on the evaluation. As it is the allotment evaluation that is appealable, staff has interpreted this as meaning the evaluation of the points given to a project under the 13 categories. The Council can therefore modify the scoring of a project.

City Manager Tewes indicated that Mayor Kennedy raised the same question at the time of the Measure P appeals as to the interpretation of this particular section. He said that if there is any ambiguity and the Council wants to clarify this section, now is the time to talk about it. He stated that it has been consistently held that the allotment evaluation means "points."

Mayor Pro Tempore Chang stated that it was her belief that there was a difference between the term allotment and allocation.

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Planning Manager Rowe noted that one of the comments made was that staff goes through the document and that a consistent wording be used (e.g., allotment or allocation).

Mr. Lyle said that it was his belief that there is a difference between the term "allotment" and "allocation." Unfortunately, in the document itself, he felt that there were places where the terms are misused. It was his belief that an allocation was more of a process as one would be allocating something. The use of allotment is the term that actually builds a unit. He said that it was the intent of the Measure E language for the scores to go to the Council and not the allotments. Specific rigid language was written into Measure E for how the allotments could be given so that there would be no gerrymandering with the allotments. He stated that the same language was kept in Measure P. Therefore, both Measure E and P state that this was not a Council peroggative. He clarified that the Measure P formula determines the number of allotments available in a given year based upon the Department of Finance population figures. The City Council, based upon input from the Planning Commission, takes the number of allotments and divides them up into set asides. Therefore, the City Council determines how many units are to be reserved for each of the set asides. The scoring is conducted by the Planning Commission with the scoring returning to the Council for adjustments in the appeal process. Based upon the scores, there is a determination on how the allotments should be given out, with no flexibility being given to the Planning Commission or the City Council based on Measure P. He indicated that the City has been more flexible than is stated in Measure P. He said that one of the modifications proposed in the language before the Council is to confirm this language. modification incorporates flexibility and moves it away from the rigid formula. It states that the Planning Commission and City Council has the flexibility to modify the allotments.

Council Member Tate clarified that the flexibility added did not change the number of allotments or the categorization of the allotments.

Council Member Carr further clarified that the current language does not add additional flexibility but incorporates the current practice into the language. He said that the situation experienced with the appeal process this past year was attributed to the timelines being pushed back on several different fronts. This resulted in the Planning Commission going ahead in proceeding with the allocations based on the points before the Council held its appeal hearings on the points. The City had an appeal process where allocations were already granted. This placed the Council in a bind to consider the appeals. He felt that the City needs to work on the timeline and the process. He noted that Mr. Lyle laid out how the process is supposed to work. He felt that the process would work well if the Planning Commission scores the project and the points are awarded based on the competition. If there are appeals, the Council should consider the points before any allocations are given out. If the Council approves the appeals and points are changed, he felt that the ranking needs to be changed prior to any allocations being given out. He noted that this year, the process was conducted in reverse because other issues pushed the process back. This resulted in the City being rushed in order to meet timelines and the next steps in the process.

Mayor Pro Tempore Chang recollected that in some years the Council tapped into the next year's allocation based on the fact that there were large projects.

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Mr. Lyle indicated that the Council does have the right to allocate into a second year as Measure P contains specific language that states that if it is not economically feasible for a project to proceed with a partial allocation, the Council may allocate into a second year. Allocating into a second year occurs for a project that has an allotment in a prior year. He said that with the proposed changes, a project does not need to have a prior year's allocation (e.g., a project that got started in the second year instead of the first year, resulting a continuation of allotments into a third year).

City Attorney Leichter stated that there is nothing built into Measure P now or that is being suggested to state that the City would raise a project's score and be given allotments.

Dick Oliver indicated that he was a member of the subcommittee and has been an active developer who has submitted Measure E/P applications for the past 15 years. He felt that the process has worked exceptionally well with regards to the appeal and the award of allotments. He said that the Council, based upon the Measure P criteria and the state population figures, determines the number of allocations in a given competition. The Council also determines the number of set asides (e.g., downtown, affordable housing, attached units, etc.) and forwards these numbers to the Planning Commission. The Planning Commission sends out a memorandum on how projects will be scored and information on the competition. The Planning Commission evaluates each project and determines the number of points to be given to each project. These points can be appealed to the Council who can modify the points. The Planning Commission then makes the allocation for the distribution of allotments to the various projects. He said that the problem the City faces is that it appears that it is mandatory that the City grants all units requested to the top scoring project. He said that it has been past practice that it would not be in the best interest of the community to give all allotments to the highest scoring project. The allotments are granted such that several new projects are approved versus having one project being allowed to proceed with construction. He felt that this process has worked well.

Mr. Oliver stated that this is the first year that he has experienced where you have a nature of the appeals as they were heard. The Planning Commission and the City Council took ten times the amount of time to listen to one applicant make an argument for their position. Under the appeal hearing, the City allowed the appellant to make their presentation for as long as they wanted. He felt that this was unfair because the City Council did not have any of the background about what the other applications looked like nor the entire background process. The Council felt that the appellant's duet project was needed and that it tried to find a way to give it a higher score to allow it to be built. This would result in the Council politicizing the allocation process. He felt that this would foul up the Measure P process as it will place pressure on every Council member to hear every developer state why their project is the best, requesting that the Council change the scoring allocation system. He said that the process, as exists today, works fairly well and is equitably determined. He said that project proponents can appeal points with the allocations going back to the Planning Commission to be made based on the language contained in Measure P. The distribution would not be appealed to the Council. He felt that this system has worked for the community. Should the Council wish to modify this process, it would extend the process and the Council would be pressured by each developer who thinks that their project is the best and try to change the allocation outcome.

Council Member Tate agreed that the use of the terms allotments and/or allocations should be used consistently. He felt that the Council has the say to set the number of allotments/allocations at the front

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end of the process. This sets the rules by which the competition is played. If the Council comes in at the back end and states that it has the right to adjust the allotments at this point in time, the Council would be changing the rules. He agreed that this would be gerrymandering to the extreme. He could not see changing the rules at the back end of a competition as it does not seem to be a fair way to proceed. He felt that the Measure E/P drafters were adamant that they wanted to depoliticize the process and stated his support of this.

Mayor Kennedy felt that the Council needs to decide on the term to be used. He noted that the City has consistently used the term allotment in the language of the revisions. He agreed that both words may mean the same although the City has been using them in different contexts for different meetings, using the term allocations to discuss the process. He did not see the term "allocation" being used in the proposed text amendments. He recommended that the term "allotment" be used for consistency and common language. With respects to the Council addressing appeals, he felt that an appeal does not mean a thing if you cannot change a thing. He did not believe that it was an appeal if it goes back to a decision of the Planning Commission. He did not believe that this gives the Council the ultimate discretion. He said that he understood the arguments that have been made. He stated that he was not necessarily suggesting a lengthy discussion on this issue but that it appears to him that the language, as written, is not the proper language for what is actually occurring. If this was the language under the original Measure E, he felt that it was intended to give the Council some discretion. However, he noted that the Council has not been allowed this discretion. He felt that it should be made clear that there is no appeal to the Council. He said that if all Council Members agree that the Council may change the point evaluation, the language should be modified to state so and strike out the word "allotment."

Council Member Carr said that in his three years serving as a Council Member, this was the first Measure P appeal he has evaluated. It does not sound like the Council has had this significant of a problem with appeals in the past. He felt that the difference in this appeal process was the fact that allocations were given out before the Council considered the appeal. This placed him in a tough place because he wanted to consider the appeals on their merits. He felt that the City had already given out all of the units available based on the process that was determined at the beginning and the rules that everyone was playing by. Yet, the Council had this appeal process that it needed to go through. He did not want the appeal process to be for show as it needs to be a legitimate process. If the Council fine tunes the process where this does not happen again, the Council can hear the appeals at the appropriate time so that the appeals are based on the competition and the points. This would result in the point total being given back to the Planning Commission before any allocations would be given as this is what has been working in the past.

Mayor Pro Tempore Chang stated that she understands that the Council cannot change the total allotments as it is a fixed number.

Council Member Carr felt that the Council would be undermining the Measure E/P competition by creating a situation where anyone who does not receive the exact point totals they want in a given competition would contact individual council members to lay out their case, trying to convince the council members as to why they should be given allotments regardless of the competition that just occurred. The Council would individually have to go through each one of the projects without the benefit of having been a part of any of the hearings for the competition. He felt that the appeals should

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be based on the competition itself and whether or not projects were scored fairly compared to other projects based on the rules established in advance of the competition. He did not believe that the appeal process was one that a project was better regardless of the rules. However, if the Council did not believe that projects were evaluated fairly, it should be sent back to the Planning Commission, advising them they should consider a particular point.

Mayor Pro Tempore Chang felt that should the Council change the points for a project(s), it would be the same as changing the allocations. She felt that the Council should have the prerogative to change both the point score and the allocations. She stated that if the Council is not able to change the allocation, it is not an appeal process.

Mr. Oliver stated that had the Council granted additional points to the two projects that appealed the Planning Commission's point totals, this would have changed the scoring and ranking. This would result in the projects going back to the Planning Commission, and that the Planning Commission would have to reallocate the units. Therefore, the Council's appeal process conducted this year was a valid one. It reached a result that did not change the rankings. Therefore, the Planning Commission did not have to go back and reallocate. He stated that the Planning Commission's distribution of allocations was conditioned on what action took place on the appeals. He noted that the Council made some adjustments to the projects' points but not enough to change the ranking. In hearing an appeal about a particular category where an individual felt that they were misunderstood by the Planning Commission and that all facts were not taking into account, the Council takes this into account and determines whether the project proponent is entitled to an extra point(s). He felt that the Council should do this with blinders, not knowing whether it would/would not change the allocations. The Council should make a decision as to whether a project warrants an additional point, sending the project back to the Planning Commission. Should a project's total score change the ranking, the Planning Commission will have to change the ranking. This results in the appeal process being valid and is sanitized. He said that appeals should be considered before the Planning Commission makes the allotments. He said that the process got compressed this year based on a host of circumstances where this would not have normally happened.

Mr. Lyle further noted that staff initially scores the projects. Staff's recommended sccoring goes before the Planning Commission. Applicants talk to the Planning Commission about their scores, resulting in the Planning Commission given staff direction. Staff modifies scores based on Planning Commission direction. The scores return to the Planning Commission where applicants are given an opportunity to address the Planning Commission about the point scores. If applicants appeal, the appeal goes before the Council. The Council can direct and make point score changes. He said that 24 of the 25 years the RDCS process has been in affect, allotments have not been handed out prior to the appeal process. In the appeal process, staff will go back to see if any other projects are also entitled to a point based on the ruling of the City Council as the Council's reasoning for awarding points to an appellant may apply to other projects. At this point, the City has final scores. If you look strictly at Measure P, not even the Planning Commission had any discretion with respect to actually passing out the allotments as it was rote. With the new criteria, it blesses the flexibility of past practices.

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Mayor Kennedy said that as he reads the appeal procedure as cited on Section 18.78.130(a), it states that "An applicant may appeal to the City Council pursuant to subsections B or C of Section 18.78.125. He noted that this specifically refers to the point scoring process. Therefore, this answers his question.

City Attorney Leichter noted that the proposed modifications strike the term "allotment evaluation" contained in Section 18.78.125, subsection B and specifically included the term "scoring." To be consistent, she recommended that this change be made to Section 18.78.130 subsection D if this is the Council's direction.

<u>Action</u>: By consensus, the Council <u>agreed</u> to the language modification as suggested by City Attorney Leichter.

Council Member Sellers said that he was a little anxious about insuring that the Council is able to do what it wants to do through the Downtown Plan, the General Plan, and the next RDCS measure. He wanted to make sure that the Council allows flexibility in the competition process to allow the City to proceed with the different housing models that are emerging. He said that one of the issues trying to be addressed is the fact that Measure P is somewhat restrictive and the City ends up with too many projects that look similar. If this becomes the case in the downtown area, he did not believe that projects would be built. If they do get built, they would not be the highest and best use. This would become a critical issue in the downtown. He inquired whether any thought was given by the Committee, in its discussions, on how to address different housing models in the downtown. He inquired whether a separate committee should be established or has a discussion within the Planning Commission take place so that the downtown projects are reviewed in a way that would allow for more creativity and flexibility in the design elements so that the City is able to maximize the value of the projects to be built in the downtown.

Council Member Tate stated that not only does the recommended change afford flexible criteria; the Measure P Update Committee has added a new category to the criteria that is aimed directly toward achieving creative housing in the downtown.

Council Member Carr felt that there are a lot of things outside of Measure P that the City could do and should be doing to help promote downtown growth both in zoning and the other items that the Downtown Plan addresses. He felt that the City needs to start the conversation about implementation. He felt that Measure P and the update to Measure P would play an important role on how the City achieves the kind of housing desired in the downtown but that there were a lot of other items outside of Measure P that the City needs to do as well.

Council Member Sellers felt that the Council, Planning Commission, the downtown and the community, as a whole, has a lot of work to do to make sure that it gets the kinds of projects that it desires. It was his hope that the text amendments would allow for this. He said that he has read through the proposed text amendments several times and felt that it would encourage the housing types desired. He felt that there has to be an appeal process in place, noting that the initial Measure E drafters recognized this fact and that this was carried to the Measure P initiative. He said that the bar has to be high for the appeal process and felt that it was. He felt that the problem with the appeal process this year was that the City did not go through the process as defined. He noted that a mechanism is in place and felt that the City

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needs to reconsider the appeal process after the measure passes to make sure that the City allows for adequate time. The Council needs to talk to the Planning Commission about the City's processes so that the process does not get extended in such a way that problems arise in the appeal process. He felt that the appeal process was an internal problem. He noted that the only substantive changes before the Council was the allocation/allotment wording and using the term "scoring" instead of "allotment." He inquired whether there were any other amendments that need to be identified.

City Attorney Leichter informed the Council that staff has edits which it believes are grammatical in nature and should not be substantive. She requested Council direction and that staff would return on October 15, incorporating identified changes. She indicated that the City has 120 days after the initiative is enacted to amend specific policies. If the Council is contemplating that there will be fairly substantive amendments to City policies once the initiative passes, the Council may wish to make this time period longer.

Council Member Sellers felt that a lot of the City's policies were adequate but that the City has not gone about them the right way.

Mayor Kennedy noted that the Planning Commission would score projects and that the appeals would go the Council. However, the way the language is written, it states that the Planning Commission awards the allotment, followed by the appeal process (Section 18.78.125, the last part of paragraph C). He inquired whether the Planning Commission was actually awarding allotments prior to the appeals being considered by the Council.

Planning Manager Rowe noted that the measure talks about using the most recent population estimates from the Department of Finance. The previous year's population estimates were used when the Council authorized that a competition be held. However, the City holds off on the actual award of allocations until the next year's population estimates are released at the end of April or first part of May. He indicated that there is a preliminary ranking based on the previous year's population estimate formula. However, the Planning Commission adjusts the ranking once the City has the benefit of the most recent Department of Finance population estimates released in the spring of each year.

Mayor Kennedy inquired whether it would be appropriate to ask that Measure P Update Committee to review the appeal process.

Council Member Carr indicated that the Measure P Update Committee has concluded its charge.

Council Member Tate said that the Measure P Update Committee could meet again, if directed by the Council.

Mayor Kennedy expressed concern that the City has a process it has been following that is not consistent, referring to Section 18.78.125 – Award and Issuance of Allotments, paragraph C, last sentence. He said that paragraph C is where there is discussion about the actual awarding of allotments. The last sentence states "Where allotments are made on the basis of comparative standing on the list, any applicant who has received the required minimum number of points but who is not high enough on the list to receive a development allotment, may appeal its scoring to the City Council..."

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Council Member Tate recommended the deletion of "but who is not high enough on the list to receive a development allotment" from said sentence.

Council Member Carr said that when the Planning Commission conducts its scoring of Measure P applications, they set a threshold that they know no one will receive an allotment based on points. Based on the number of units available, it is indicated that any projects below this threshold number will not be receiving allocations. He interprets Section 18.78.125 to read that anyone below this threshold has the ability to come before the Council and appeal. It is not that allocations have been given out but that it is referring to those projects that are not high enough on the list to receive a development allotment.

City Manager Tewes indicated that allotments are always awarded on a comparative standing, even with set asides.

Mayor Kennedy indicated that he would like to clarify what the City is doing with what is written, making them consistent with one another.

Action: On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) Continued Review to October 15, 2003, taking into account the comments addressed.

15. POLICY DIRECTION REGARDING OWNERSHIP ATTACHED HOUSING

Planning Manager Rowe presented the staff report indicating that there are fewer and fewer insurance carriers that are providing construction liability coverage for residential development that includes attached housing. He indicated that the cost for this insurance has increased significantly. When this matter was introduced before the Planning Commission, the Commission established a subcommittee to investigate what approaches can be undertaken to address this issue. Staff confirmed that there are only two insurance carriers that are providing this type of coverage and that the costs of the premiums have raised significantly. Therefore, the per unit cost for insurance is significant. In trying to come up with a solution, in order to get insurance coverage for detach units, a number of approaches have been considered: 1) look at projects on a case by case basis; or 2) look at developing a more comprehensive ordinance that would apply to all projects in the City that are currently required to provide attached housing. He indicated that the subcommittee met last Friday, attended by Council Member Tate. He stated that it will be the Committee's recommendation to the Planning Commission and the City Council that the City look at a comprehensive ordinance approach because it is felt that it is one that could be completed in a shorter period of time. He indicated that an attachment to the staff report addresses the pros and cons of the two models. He said that one of the changes being recommended by the subcommittee with respect to the comprehensive ordinance is not to make it a mandatory requirement that units be separated. This would allow builders who are able to secure the liability coverage to proceed with a more traditional attached housing project. He requested that the Council provide direction to staff and the committee whether it supports a zero lot line as a setback approach to work around the construction liability coverage problem. If so, is this something that can be supported

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through the development of a comprehensive ordinance or should this be considered on a case by case basis?

Mayor Kennedy opened the floor to public comment.

Rocke Garcia stated that this is an extremely critical situation to his project. He said that at his Madrone project, he will only be able to build five more units and then the project would be stopped. He indicated that he serves on the subcommittee who has discussed solutions such as zero lot lines, z-lots, to very innovative possibilities in order to detach homes and allow developers to attain insurance.

Dick Oliver indicated that he also serves on the subcommittee. He said that it was staff's recommendation that the City utilize a project by project review. It was the subcommittee's consensus that the City should go through a comprehensive review. He said that the problem occurred because 10% of a project has to provide attached housing. He has a project where it is impossible to attain a reasonably priced insurance rate at this time. Therefore, the project had to stop construction. Both Coyote Ranch and Mission Ranch got insured before the crises developed. However, these projects will face the insurance problem with the next phase of development. He stated his support of the comprehensive approach with the need being determined by the Director of Community Development or his/her designee. It was his belief that a developer should demonstrate a need that is determined by staff without coming before the Council. If staff determines one way, a developer can appeal through the normal process; appealing to the Planning Commission and the City Council to override staff's determination. This would save at least six months in the process. He indicated that the Architectural Review Board is trying to set up a subcommittee to review the issues quickly to provide their input to staff. He said that the provision being suggested would have an automatic termination in two years with an automatic requirement to review it in twelve months. This would allow staff, Planning Commission and City Council to monitor the comprehensive approach to ensure that what is being done is not wrong for the community. He felt that there is a safe guard associated with the comprehensive approach. He indicated that the main issue is timing as he has a project that needs to get started.

No further comments were offered.

Council Member Tate indicated that the staff report was submitted before the subcommittee's meeting on Friday. Therefore, the information contained in the staff report was prior to the meeting held on Friday. He said that the subcommittee's recommendation was not contrary to the staff report. He stated that it was the project by project approach that was being recommended by the subcommittee, but under the supervision of a comprehensive ordinance. The subcommittee is recommending that staff and a subset of the ARB conduct a project by project review so that it is a subset of the normal process. This would allow the City and developers to attain the benefit of fast tracking. He felt that it was highly desirable to keep projects on track and make the projects work so that allocations are not lost. If every commission was involved in the project by project approach, extensions would be necessary for the projects. He stated that the subcommittee was trying to avoid the extensions that would result.

Council Member Sellers inquired whether the subcommittee would develop the comprehensive ordinance and bring it back to the Council for its consideration. In the interim, will the City utilize the project by project approach?

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Council Member Tate indicated that City Attorney Leichter looked at an emergency ordinance as the right way to go. However, she indicated that the City could not justify the emergency nature of an ordinance. Therefore, the subcommittee is looking at a comprehensive ordinance.

City Attorney Leichter indicated that some work will have to be done to come up with the findings to justify an ordinance change.

Council Member Tate said that it was his understanding that the Council does support the use of zero lot lines and reduced setbacks when he was assigned to the subcommittee.

Action:

On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) <u>Approved</u> the Subcommittee's recommendation to proceed with a Comprehensive Ordinance that would have staff and a subcommittee of the ARB to conduct a project by project review. Staff to return with a draft ordinance for Council consideration at its next meeting.

16. ART IN PUBLIC PLACES

Business Assistance and Housing Services Manager Maskell presented a brief staff report.

Mayor Kennedy opened the floor to public comment.

Wes Rolley indicated that both he and his wife are local artists. He expressed concern that public art has been drug out for a while. He requested a process be developed by which the City can acquire, install, and maintain art in some of its major public venues such as the community and cultural center and other public facilities within the City. If the City continues down the path of trying to iron out a public arts policy, he felt that the City would be holding the same discussion next year. He was interested in seeing the process be put into place so that something can be done rather than spending another year talking about it.

Chuck Dillmann felt that the City is headed for a potentially big program and that it was important that this be considered. He recommended that the Council establish quality standards for art and that it turns public art over to another organization for administration and funding. He felt that there was enough going on in the City without trying to administer a large arts program. He said that he watched the fine arts commission of the City of San Jose when it undertook public art, noting that it was a massive undertaking.

No further comments were offered.

Mayor Kennedy indicated that he reviewed a portion of the video of the Council meeting where this issue was discussed. He recommended that the City move forward with public art. He recommended that the City start by establishing a policy on the remaining public projects and devote 1% of the project's budget toward art. He said that it was his recollection that the Council decided that it did not

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want to form an arts commission but rather rely on the private sector to handle the art program for the City.

Council Member Tate indicated that the non profit agency identified refused to take on public art. He did not support requiring 1% being applied toward public art for each project. He felt that the Council may want to require more or less be applied to various public projects. He said that there has been discussion about placing 1% into a fund that can go to other areas, which may result in a project being cut. He could not support this action.

Council Member Sellers felt that the Council could state that it wants public art in subsequent public facilities such as the aquatics center, the indoor recreation center, and the library. He said that the aquatics center may be able to incorporate a mosaic as part of the process that does not add cost to the project. He felt that the City can be creative and that it may be the public sector that would help put public art together. This would result in the City achieving the art that it wants. The question that keeps being raised is who will determine what the art will be. He said that this is another issue that may not be resolved this evening but that it has to be considered. He recommended that the Council agree to include public art in these public spaces and work towards this goal. The Council could work toward developing community resources for art. He noted that the Morgan Hill Community Foundation will be holding an art day in the near future. This may be a way to try to figure out, through the private and non profit sectors, whether the City can develop art in existing places. He said that it may be as simple as stating that in the Community and Cultural Center, space has been designated for art and that the walls in the hallways will have constant rotating art, working with staff to make sure that they are rotated on a regular basis.

Mayor Kennedy summarized that the Council would support a policy of providing art in public buildings, in the design or in construction underway, including the aquatics center, the indoor recreation center and the library. The Council is to assist in the development of a non profit or work with a non profit group to develop a process for the right public art. The City is to set aside locations in existing public spaces for art on a rotational or permanent basis. He stated that he would like to help move this process along. He felt that Council Member Sellers suggestion would help as a starting point.

Council Member Carr said that at the Council workshop, one of the comments stated was that the Council should be the body to make the decisions on public art rather than trying to develop another body. He stated that the City does not have the resources to develop another commission or another non profit organization at this time. He noted that at the prior Council workshop, the Morgan Hill Community Foundation stated that they were not interested in taking over public art. He stated that the Council could review and approve public art as part of its normal process in approving projects rather than asking another body to do so.

Mayor Kennedy recommended that the Council start the process, appointing a subcommittee with the goal of bringing on board one of the non profit organizations to pick up public art, turning public art over to a non public, non profit group.

Council Member Carr felt that as the Council approves each of the public projects; it should include public art and not pass on the Council's responsibility.

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Council Member Sellers clarified that his recommended motion would be that the Council include public art in the aquatics center, indoor recreation center and the library; determining the type of art that would be approved. Concurrently, the Council needs to figure out how to encourage art work. He noted that the Community and Cultural Center has walls that could accommodate art. He recommended that the City formalize the process and encourage opportunities. There could be other areas that the Council could designate space and then work with non profits and others to place art in these places (e.g., lawn area in the community and cultural center.)

Council Member Carr felt that the long term goal should be to broaden beyond the three projects identified by Council Member Sellers. He stated that he was not opposed to looking at private projects, especially when they are receiving city assistance. He said that he understands the reason the Council wants to include public art as part of these projects. However, the Council has stated that it wants to include other design features that have not made it into some of the City's public projects. Whether it is a percentage basis of each project or a percentage off the top of the reserved RDA funds, he would feel more comfortable if the City is guaranteeing that this takes place. He noted that the Council set a goal of LEEDs certification for City public projects, noting that the Council approved an action this evening of not doing so with one of the City's project. He sees that this could happen with public art.

Mayor Pro Tempore Chang recommended that each public project be required to program \$50,000 for public art. She felt that requiring 1% for public art may be too much. If 1% is required for the indoor recreation center at a project cost of \$26 million, it would result in \$260,000 for public art. She stated that she would have a hard time requiring this amount being set aside for public art.

Mayor Kennedy recommended that the indoor recreation, aquatics and the library committees identify a public arts budget.

Council Member Tate stated that he would not approve any motion that commits city funds. He noted that the Council is conducting value engineering on every single project that it has. He does not know why art, as well as LEEDs certification and other items, are not subject to value engineering to allow the City to come up with the optimal solution for the project that the Council wants to deliver. He did not want to commit funds when the Council does not have the budget to complete all the visioning projects.

Mayor Kennedy felt that there may be some things the City can do, artistically, as part of a project with the funds remaining, as a goal.

Council Member Tate stated that he would support establishing public art as a goal but not committing funds to it, reviewing the various approaches as it may create innovation and suggestions on how to provide public art.

Council Member Sellers concurred with Council Member Tate that setting a goal would give the Council the flexibility to do what it wants to do.

Action: On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council unanimously (5-0) Agreed to establish public art as a goal in subsequent public

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facilities such as the aquatics center, the indoor recreation center, and the library; but not committing public funds, reviewing the various approaches that may create innovation and suggestions on how to provide public art.

Council Member Sellers said that it would be unfair to impose public art on the private sector based on today's economy, noting that the City also faces constraints. Other than continuing to encourage art organizations in the community, he was not sure what else the City could do.

Mayor Kennedy stated that he would be willing to work with Council Member Sellers and the Morgan Hill Community Foundation to address public art.

Council Member Carr supported Mayor Kennedy and Council Member Sellers discussing public art with the Morgan Hill Community Foundation, requesting a timeline so that they can return to the Council if the discussion is not going anywhere as he is also interested in continuing this conversation.

Action: By Consensus, the Council <u>agreed</u> to consider item 18 at this time.

Redevelopment Agency and City Council Action

OTHER BUSINESS:

18. OFF-SITE IMPROVEMENTS FOR DAY WORKER CENTER

Director of Business Assistance and Housing Services Toy presented the staff report.

Chairperson/Mayor Kennedy opened the floor to public comment. No comments were offered.

Action:

Mayor Pro Tempore/Vice-chair Chang made a motion, seconded by Council/Agency Member Sellers to <u>Direct</u> Staff to Negotiate and Prepare the Necessary Agreements, Not to Exceed \$175,000, to Fund the Off Site Improvements for the Day Worker Center; and to <u>Bring</u> Such Agreements to the Redevelopment Agency Board for Consideration

Council/Agency Member Sellers stated that he was encouraged to read, in the staff report, that there are opportunities for lowering the costs and coming up with creativity. He encouraged staff to be as creative as possible due to the uniqueness of this project. He said that this project would not have proceeded without the cooperation and strong encouragement of Weston-Miles and the diligence of Mayor Pro Tempore/Vice-chair Chang. He noted that Weston-Miles did not have to allow the day worker facility at the front end of their project. Although the Council/Agency structured the initial project as a requirement, Weston-Miles will be donating significant architectural services.

Council/Agency Member Tate stated that there is no question that everyone wants to proceed with a day worker center. The City was able to use CDBG funds to help the process. However, he noted that this has never been a City project and that it is becoming more and more a city project. Now, the City is investing in a \$175,000 loan. He expressed concern that when the City gets the money back, the City

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will loose what it was trying to achieve. He stated that the only way the City will get its money back is when the day worker center goes away. He said that he was trying to think about innovative things that would make it different. He inquired whether the day worker center will be that much of a city project that it has to keep all its money there to keep the day worker center, noting that this is only a three year commitment from the developer and that the developer can develop at the end of three-years. He inquired how the City can get the day care center it wants long term and solve the problem it is trying to solve. He felt that the City is putting a lot of money into a day worker center as a temporary fix. He was not sure if this was the right way to proceed.

Mayor Pro Tempore/Vice-chair Chang noted that the City is awarding the developer a loan to be repaid to the City. She said that it was her belief that the Dayworkers Committee is looking for a permanent location for the day worker center.

Council/Agency Member Tate inquired how a permanent day worker facility would be funded.

Council/Agency Member Sellers said that the money to be used would allow the completion of site improvements sooner than they would otherwise. Therefore, there are residual benefits to the downtown that would be complimented by establishing the dayworker center at this location. This would provide a significant positive impact to the downtown area. He said that it has been his experience that once entities get underway and start to develop momentum, it would be much easier to continue the momentum. He felt that the options after three years are going to be much more significant than they are at this time. He agreed that there should be some concern regarding long term plans for the dayworker center. However, he felt that the immediate benefits is seeing an improvement in the downtown and the long term opportunities to establish an entity that will be stronger and be in a much better position to continue their work down the road. These facts are sufficient for him to proceed with the recommended action.

Mayor Pro Tempore Chang invited Council/Agency members to assist and be a part of the New Year's major fundraising event. She said that all proceeds from this event will go toward the on site improvements for this project. She stated that this fundraising event will continue every New Year's Eve. She indicated that there is community support for the day worker center.

Council/Agency Member Carr stated that he has similar concerns to those of Council/Agency Member Tate. Based on what he has just heard from Mayor Pro Tempore/Vice-chair Chang, he has additional concerns. He inquired whether it is known what will happen after three-years. He is now hearing that there is another fundraiser planned and that Mayor Pro Tempore/Vice-chair Chang and Council/Agency Member Tate also put a lot of work into a previous fundraiser event held not too long ago. He stated that the City has invested a significant amount of CDBG dollars to get the ball rolling. He said that he would be comfortable with the action if he knew what would happen after the three-years. He indicated that when the granary project came before the Council/Agency Board, he suggested that the City take a look at the vision for the overall piece of property. The City would then know how the dayworker facility would fit in with the overall plan of the property and the timeline when it will fit in so that the improvements are of a benefit to the downtown. The City could plan the improvements better so that they are not installed only to be torn out 2-3 years later and become a detriment to the downtown. He recommended that the Council/Agency hold off on this item and that it have the conversation of what is

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the long term goal for the day worker facility instead of what is the quick fix with the investment of very limited funds. If the City is going to become this involved in a process, the Council needs to be talking about it more comprehensively.

Mayor/Chairman Kennedy noted that what is being discussed this evening is \$175,000 with the vast majority of these funds going toward improvements to the site that will be used by Weston-Miles in the development of their future project. He noted that \$47,000 of this fee is to be used for undergrounding of utilities in lieu fees. He said that the curb, gutter, sidewalk installation, sewer, and water, and storm drains are utilities on the site that will have an ultimate purpose, irrespective of what goes on site. He said that he and Mayor Pro Tempore/Vice-chair Chang have been working hard to try and cut the cost of the project so that the City is not going to be wasting a lot of funds that won't be recoverable. He said that the vast bulk of the funds are going to be applied to the site itself and that Weston-Miles will be paying back the bulk of these funds in their loans as they develop the site. He does not see the action becoming a risk to the City.

Council/Agency Member Sellers noted that the recommendation is to allow staff to go back and negotiate at a not to exceed amount. He stated that the documents would return to the Council/Agency for its approval. Therefore, he was comfortable in proceeding this evening but that in order to address Council/Agency Member Carr's concerns; he encouraged the dayworker center entity to address his concerns concurrently with the negotiation process. He felt that Weston-Miles could help answer some of these questions to a degree.

Council/Agency Member Carr stated that regardless of how the Council/Agency Members vote on this item, it should not be seen as support or non support for the dayworker center. He noted that the entire Agency/Council approved the CDBG funding source.

<u>Vote</u>: The motion <u>carried</u> 3-2 with Council/Agency Members Carr and Tate voting no.

City Council Action

17. <u>COUNCIL DISCUSSION OF ADVISORY COMMITTEE AND COMMISSION COMMUNICATIONS AND REPORTING RELATIONSHIPS, INCLUDING ROLE OF COUNCIL LIASONS</u>

Council Member Tate indicated that this item came out of his attendance at a September 2003 Senior Advisory Committee meeting. He stated that the Senior Advisory Committee got to the subject of the indoor recreation center. He said that the report from a subcommittee member of the Senior Advisory Committee generated discussion where a lot if items were questioned. He said that there were a lot of questions regarding the nutrition program in terms of whether two kitchens would be necessary, etc. He was not sure if these questions have been resolved to the satisfaction of the Senior Advisory Committee. He indicated that staff is putting together a detailed report on everything that has been done on the nutrition program that establishes why the Council believes it is heading in the right direction for the indoor recreation center. He stated that his concern was not as much for the nutrition program as some of their statements that reflect about the Council and committee/commission relationships. He said that comments from the Senior Advisory Committee include the following: There is no way that they can

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change the Council's mind as the Council's mind is made up. The City is moving backwards and that that they do not see any purpose in the actions being taken by the Council. The same square footage is being proposed for the indoor recreation center with no convenient access similar to that of the current location. The Council promised that there would be interaction with the youth and that they see that this has gone away. He said that if the Council is going to have an advisory committee and the advisory committee is questioning the Council to this degree, he did not believe that this is working from a reporting relationship stand point. He stated that he understands that there is a complication in reporting through the Parks and Recreation Commission as well so the Senior Advisory Committee does not have direct input to the Council. He took their comments as being a red flag such that the Council needs to establish a relationship so that it gets itself in sync with the Council's advisory committee, especially when there is a commission in between. He felt that this red flag needs to be addressed and that the Council needs to have a conversation on how it can address or prevent these kinds of issues occurring in the future.

Council Member Sellers stated that the Indoor Recreation Center subcommittee would like to improve/increase its communication process. He stated that he and Mayor Pro Tempore Chang discussed the process and how the subcommittee could encourage opportunities for public communications not only through the formal CEQA process whereby communications are conducted through neighborhoods but to encourage a broader community process, including senior citizen input and opportunities for input. He said that the clarification of issues is a concern as well. He stated that he would be attending the next senior advisory committee on October 7. He said that he has met with a couple of Senior Advisory Committee members and has addressed some of their concerns. He indicated that the issue of the kitchen will be addressed next Tuesday. He said that there has been some concern raised that the new indoor recreation center will be the same size as the current facility. He felt that the Council needs to engage the Senior Advisory Committee in the programming and use of the spaces at the indoor recreation center facility. He indicated that the senior component will have the youth center facility on one side and that some of the offices and daycare/childcare facilities are located in the same general vicinity. Access was also a big issue. He stated that significant design modifications were made so that vans and other transportation vehicles can access the site more closely. He stated that the Indoor Recreation Center subcommittee will be engaging the Senior Advisory Committee more directly and meeting with them next week to try to address these issues.

Mayor Kennedy inquired whether it was time for the Senior Advisory Committee to report directly to the Council as has been done in the past. He requested that staff look into this possibility and determine if there are any additional costs associated with this direct reporting mechanism.

Council Member Tate felt that the City has excellent staff to the Senior Advisory Committee, the Library Commission and the Youth Advisory Committee. He indicated that he has been attending some of the youth advisory committee meetings and that Marilyn Leibers has been assigned by the Parks and Recreation Commission to serve as their liaison to the committee, attending every meeting. He was not sure whether it was the reporting directly to the Council versus reporting through the Parks and Recreation Commission that is the issue, noting that he has attended three Senior Advisory Committee meetings but has not seen a Parks and Recreation Commission member in attendance. The issue may be the liaison role for these committees

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Mayor Pro Tempore Chang noted that most of the Council members have a close relationship with the Parks and Recreation Commission. She stated that the Parks and Recreation Commission are not happy with some of the decisions being made by the Council. She felt that the Senior Advisory Committee and the Youth Advisory Committee are advisory committees. She inquired whether it was felt that the Council has not done a good job informing them or incorporating their comments; or was it an issue that the Council did not do exactly what they recommended.

Council Member Sellers felt that the problem is that the Council did not walk the Senior Advisory Committee through the programming/spaces for the indoor recreation center.

Council Member Carr felt that this was a discussion that the Council needs to continue. He suggested that the Council talk more globally about how all of the commissions and task forces report to the Council and how the Council gets word and direction to them. He noted that the Council has liaisons to some boards, commissions, and committees and task forces but not to others. He recommended that the Council consider whether it wants to have Council liaisons or not have liaisons to these bodies. He recommended that staff give thought to reporting up and down and the Mayor's suggestion of whether things should be reported directly to the Council. The Council can have a larger discussion about the entire process at a later date.

Council Member Tate felt that Council Member Carr is stating that it is not just the Council liaison that is an issue but the expectations of liaisons.

<u>Action:</u> By consensus, the Council <u>directed</u> that this item be re-agendized for further discussion.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

- Discussion of an ordinance to address the Tobacco issue addressed earlier this evening (Council Member Tate)
- Move ahead with the downtown plan in terms of zoning as suggested by Brad Jones (Council Member Tate).
- SCRAW workshop (Mayor Pro Tempore Chang)

Council Member Sellers noted that the Council is considering attending a retreat in January or May 2004. He suggested the Council confirm the January retreat where all council members and staff are in attendance. He noted that January 21 is scheduled to be a Council meeting night. Therefore, the Council would need to adjust its January schedule or cancel this meeting. He requested that this be done at this time as he has scheduling issues.

Action: By consensus the Council <u>agreed to proceed</u> with the January 21-23, 2004 League of California Cities leadership workshop, canceling the January 21, 2004 Council Meeting.

City of Morgan Hill Joint Special & Regular City Council and Special Redevelopment Agency Meeting Minutes – October 1, 2003 Page - 33 -

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:30 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY



CITY COUNCIL STAFF REPORT MEETING DATE: OCTOBER 15, 2003

| Agenda | Item | # | 20 |
|--------|------|----|-----|
| 5 | | •• | _ ~ |

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager

VACATION OF A PORTION OF BARRETT AVENUE

RECOMMENDED ACTION(S):

- 1. Open/Close the Public Hearing.
- 2. Adopt the attached Resolution vacating a portion of Barrett Avenue.

EXECUTIVE SUMMARY: On October 1, 2003 the City Council passed and adopted Resolution No. 5721 declaring its intention to vacate a portion of Barrett

Avenue, and set this time and place for a public hearing. The development of the Aquatics Center project requires that the City vacate a portion of Barrett Avenue. It is necessary to restrict through vehicular access to provide for a more "pedestrian friendly" entrance to the project and in the future to facilitate pedestrian access between the Aquatics and Sports Center. Staff is requesting vacation for roadway purposes only. Since there are existing and proposed underground utilities located within the right-of-way to be vacated, the City will be reserving a Public Utility Easement. The Planning Commission has determined that this vacation is in conformance with the Circulation Element of the General Plan. In addition, staff has reviewed this request with both the Police and Fire Departments and both departments are in agreement with the vacation. The property has been posted in accordance with the Streets and Highways Code. Utility companies did not need to be notified since the City is reserving a Public Utility Easement over the entire portion of the street to be vacated. To date, staff has not heard from any member of the public either for or against the proposed vacation.

FISCAL IMPACT: None

RECORDING REQUESTED BY AND WHEN RECORDED MAIL DOCUMENT TO:

CITY OF MORGAN HILL 17555 PEAK AVENUE MORGAN HILL, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING ITS VACATION OF A PORTION OF BARRETT AVENUE

WHEREAS, the Director of Public Works of the City of Morgan Hill has recommended that the hereinafter described property presently held for public purposes is unnecessary for present or prospective municipal purposes; and

WHEREAS, the City Council has previously declared its intention to vacate a portion of Barrett Avenue; and

WHEREAS, the City Council has held a public hearing on the vacation of the portion of Barrett Avenue on October 15, 2003, in which all persons interested in or objecting to the proposed vacation were heard; and

WHEREAS, the City Council of the City of Morgan Hill has determined, from all the evidence submitted, that the hereinafter described portion of Barrett Avenue is no longer necessary for present or prospective public use.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS;

SECTION 1: The City Council of the City of Morgan Hill hereby finds from all evidence submitted that the land described in Exhibit "A" and shown on the map attached hereto as Exhibit "B" is unnecessary for present or prospective public street purposes, and hereby orders the vacation of said portion of public street in accordance with the provision of Streets and Highways Code Part 3, Chapter 3, Section 8320, et. seq.

SECTION 2: From and after the date this Resolution is recorded the portion of public street described here as vacated will no longer constitute a public street. A public utility easement shall be reserved over the entire described portion of Barrett Avenue for the installation and maintenance of City and Public utilities including, but not limited to sewer mains, water mains, storm drain lines, electric, gas, telephone, cable TV and fiber optics.

SECTION 3: The City Clerk is hereby directed to cause a certified copy of this Resolution of Vacation, attested by said Clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment or further proof in the Office of the Recorder of Santa Clara County. No fees shall be charged for recordation.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 15th Day of October, 2003, by the following vote.

AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS: ABSTAIN: COUNCIL MEMBERS: COUNCIL MEMBERS:

***** CERTIFICATION *****

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No., adopted by the City Council at a Regular Meeting held on October 15, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

| DATE: | |
|-------|-------------------------|
| | IRMA TORREZ, City Clerk |



CITY COUNCIL STAFF REPORT

MEETING DATE: October 15, 2003

General Plan Amendment Application: GPA 02-08: Monterey – Pinn Bros.

RECOMMENDED ACTION(S):

- 1. Open/Close Public Hearing.
- 2. Motion to adopt resolution denying General Plan Amendment.
- 3. Adopt resolution denying General Plan Amendment.
- 4. Motion to adopt resolution approving adjustment to boundary between Multi-Family Medium and Commercial General Plan Land Use designations.
- 5. Adopt resolution approving adjustment of boundary.

EXECUTIVE SUMMARY:

Agenda Item # 21

Prepared By:

Contract Planner

Approved By:

Community
Development Director

Submitted By:

City Manager

The applicant is requesting amendment of the General Plan Land Use designation from Multi-Family Medium to Multi-Family Low on approximately 7.5 acres of a 9.68-acre project site. The applicant is also requesting that the boundary between the Multi-Family Medium and Commercial General Plan Land Use designations on the project site be shifted approximately 50 feet east of its present location.

Approval of the 7.5-acre General Plan Amendment would reduce the available inventory of vacant R3 zoned areas to 12 acres. This would violate the City's General Plan Housing Element Action 1b-1 by reducing the available R3 inventory below the required 25-acre minimum. (See attached Exhibit "B" for project analysis.)

The Planning Commission considered the General Plan Amendment request at its regular meetings of June 10th and June 24th, 2003. Considering the impact that the proposed General Plan Amendment would have on available potential sites for higher density housing, the Planning Commission recommended, on a 5-1 vote, City Council denial of the General Plan Amendment request and approval of the 50-foot eastward shift in the boundary between the Multi-Family Medium and Commercial General Plan Land Use designations at the June 24th meeting.

The project was considered by the Council at its regular meeting of July 16th, continued at the applicant's request to the meetings of August 20th and September 17th. At the September 17th meeting, the applicant requested that the item be tabled until such time as they would be able to attend. The item was re-noticed for this meeting and the applicant has requested that the item be considered at this time.

Three resolutions are attached for Council consideration. The first two resolutions, "a" and "b", are for approval and denial of the requested General Plan amendment, respectively. The third resolution would approve the boundary adjustment. Copies of the staff report and minutes from the June 10th and June 24th Planning Commission meeting are attached for the Council's reference.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

RESOLUTION NO. "a"

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING AMENDMENT OF THE GENERAL PLAN DESIGNATION FROM MULTI-FAMILY MEDIUM TO MULTI-FAMILY LOW FOR THE 7.5-ACRE AREA LOCATED ON THE WEST SIDE OF MONTEREY ROAD, NORTH OF WATSONVILLE ROAD AND SOUTH OF WEST EDMUNDSON AVENUE. (APNs 767-23-025, -002)

WHEREAS, such request was considered by the City Council at their regular meeting of July 16, 2003, and continued to the August 20th meeting and then to the September 17th meeting at which time the item was tabled and advertised for the October 15, 2003 regular meeting; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

- **SECTION 1.** The City Council finds that the proposed General Plan Amendment is inconsistent with the provisions of the General Plan as outlined in Section 3 of this Resolution.
- **SECTION 2.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A Mitigated Negative Declaration will be filed.
- **SECTION 3.** The City Council hereby denies the requested General Plan Amendment based on the following Finding:
 - A. The State Department of Housing and Community Development recognizes the R3 zoning designation as reserved for "affordable housing" and requires the City to maintain an adequate inventory of such lands to meet the requirements of the General Plan Housing Element. Approval of the 7.5-acre General Plan Amendment would reduce the available inventory of vacant R3 zoned areas to 11.9 acres, thus violating Action 1b-1 of the City's General Plan Housing Element by reducing the available Multi-Family Medium inventory below the required 25-acre minimum.
- **SECTION 4.** The subject property is ideally situated for future multi-family housing being located in close proximity to schools, parks, shopping areas and public transit.

City of Morgan Hill Resolution No. Page - 2 –

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 15th Day of October, 2003, by the following vote.

AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS: ABSTAIN: COUNCIL MEMBERS: COUNCIL MEMBERS:

***** CERTIFICATION *****

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No., adopted by the City Council at a Regular Meeting held on October 15, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

| DATE: | |
|-------------|-------------------------|
| | IRMA TORREZ, City Clerk |

RESOLUTION NO. "b"

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AMENDMENT OF THE GENERAL PLAN DESIGNATION FROM MULTI-FAMILY MEDIUM TO MULTI-FAMILY LOW FOR THE 7.5-ACRE AREA LOCATED ON THE WEST SIDE OF MONTEREY ROAD, NORTH OF WATSONVILLE ROAD AND SOUTH OF WEST EDMUNDSON AVENUE. (APNs 767-23-025, -002)

WHEREAS, such request was considered by the City Council at their regular meeting of October 15, 2003, at which time the City Council approved the requested General Plan Amendment; and

WHEREAS, such request was considered by the City Council at their regular meeting of July 16, 2003, and continued to the August 20th meeting and then to the September 17th meeting at which time the item was tabled; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

- **SECTION 1.** The City Council finds that the proposed General Plan Amendment is consistent with the provisions of the General Plan as outlined in Section 3 of this Resolution.
- **SECTION 2.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A Mitigated Negative Declaration will be filed.
- **SECTION 3.** The City Council hereby denies the requested General Plan Amendment based on the following Finding:
 - A. The Association of Bay Area Governments (ABAG) has established that the City must construct and/or approve a minimum of 683 affordable housing units through 2006 in order to meet its share of the regional affordable housing need. Assuming an average of 15.3 dwellings per acre, approval of the 7.5-acre General Plan Amendment would result in the construction or approval of approximately 803 total affordable housing units by 2006, which sufficiently meets the City's share of the regional affordable housing need.

City of Morgan Hill Resolution No. Page - 2 –

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 15th Day of October, 2003, by the following vote.

AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS: ABSTAIN: COUNCIL MEMBERS: COUNCIL MEMBERS:

***** CERTIFICATION *****

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No., adopted by the City Council at a Regular Meeting held on October 15, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

| DATE: | |
|-------------|-------------------------|
| | IRMA TORREZ, City Clerk |

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A 50-FOOT EASTWARD SHIFT IN THE BOUNDARY BETWEEN THE EXISTING MULTI-FAMILY MEDIUM AND COMMERCIAL GENERAL PLAN DESIGNATIONS FOR THE AREA LOCATED ON THE WEST SIDE OF MONTEREY ROAD, NORTH OF WATSONVILLE ROAD AND SOUTH OF WEST EDMUNDSON AVENUE. (APN 767-23-001)

WHEREAS, such request was considered by the City Council at their regular meeting of October 15, 2003, at which time the Council approved the requested 50-foot eastward shift in the boundary between the existing land use designations of APN 767-23-001; and

WHEREAS, such request was considered by the City Council at their regular meeting of July 16, 2003, and continued to the August 20th meeting and then to the September 17th meeting at which time the item was tabled; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

- **SECTION 1.** The City Council finds that the proposed boundary shift is consistent with the provisions of the General Plan.
- **SECTION 2.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A Mitigated Negative Declaration will be filed.
- **SECTION 3.** The City Council hereby approves the 50-foot eastward shift of the boundary between the existing Multi-Family Medium and Commercial General Plan Land Use designations, as indicated on the attached Exhibit "A", based on the following Finding:
 - A. General Plan Housing Element Action 1b-1 directs the City to "accommodate additional R-3 zoning". Inclusion of the one-acre portion of APN 767-23-001 in the Multi-Family Medium designated area would represent a logical adjustment to the boundary for this purpose.

City of Morgan Hill Resolution No. Page - 2 –

- B. The eastward shift in the boundary between the two land use designations would create linear consistency in the western boundaries of the commercial portion of this project site and the adjacent parcel to the north, which has a land use designation of Commercial.
- **SECTION 4.** The subject property is ideally situated for future multi-family housing being located in close proximity to schools, parks, shopping areas and public transit.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 15th Day of October, 2003, by the following vote.

AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS: ABSTAIN: COUNCIL MEMBERS: COUNCIL MEMBERS:

***** CERTIFICATION *****

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No., adopted by the City Council at a Regular Meeting held on October 15, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

| DATE: | |
|-------|-------------------------|
| | IRMA TORREZ, City Clerk |



CITY COUNCIL STAFF REPORT

MEETING DATE: October 15, 2003

ZA-02-12/DA-02-11: NINA LANE - CHEN

RECOMMENDED ACTION(S):

- 1. Open/close Public Hearing
- 2. Approve Mitigated Negative Declaration
- 3. Waive the First and Second Reading of Zoning Amendment Ordinance
- 4. Introduce Zoning Amendment Ordinance (roll call vote)
- 5. Waive the First and Second Reading of Development Agreement Ordinance
- 6. Introduce Development Agreement Ordinance (roll call vote)

| A | genda Item # 22 | |
|-------------------------|------------------|--|
| Pı | repared By: | |
| $\overline{\mathbf{A}}$ | ssociate Planner | |
| $\mathbf{A}_{]}$ | pproved By: | |
| $\overline{\mathbf{C}}$ | DD Director | |
| Sı | ibmitted By: | |
| Ci | ity Manager | |

EXECUTIVE SUMMARY: The applicant is requesting approval of a precise

development plan and development agreement for a five-unit single-family project located at the southeast corner of Juan Hernandez Dr. and San Vicente Ct. The project, referred to as San Vicente Estates, was awarded five building allotments for FY 2003-04 under the 2001 Micro Measure P Competition. The current zoning of the property is R-1(12,000)/RPD. The site had previously been approved for a five-unit project with common open space under a separate Measure P application. The property was subdivided and a precise development plan was adopted for the site. However, the original five allotments were lost due to the applicant's inability to meet Measure P deadlines.

Under the current application, the applicant is requesting to: 1) amend the existing precise development plan to eliminate the open space lot and adjust property lines, and 2) establish a residential planned development (RPD) overlay zone which allows for a reduction in the lot depth and front setback for Lots 1 and 2 (duets). Under the provisions of RPD zoning, flexibility of site planning including relaxation of development standards is permitted and encouraged when the proposed development will enhance the area. The applicant feels the proposed project will enhance the area by annexing into the Laurel Oaks Homeowners' Association (HOA). The Laurel Oaks subdivision is located across Juan Hernandez Dr. and includes a private park. By annexing into the existing HOA, residents of San Vicente Estates will have access to a park and the cost of maintaining the park will be spread out over a larger number of homes, thereby benefiting the HOA.

In accordance with established Council policy, all residential projects awarded building allotments through the Residential Development Control System (Measure P) must secure Council approval of a Development Agreement. The purpose of this agreement is to formalize the commitments made during the Measure P process, and to establish a development schedule and mechanism to monitor the progress of the project. Project specific commitments made during the Measure P process are identified in Paragraph 14 of the development agreement, and the development schedule is contained in Exhibit B.

A mitigated Negative Declaration was prepared for the project, and includes measures to minimize potential impacts to a less than significant level. The Commission reviewed the applicant's request at the Sept. 23 meeting. The Commission voted unanimously to recommend approval of the mitigated Negative Declaration and development agreement, and voted 5-1 to recommend approval of the RPD amendment. A copy of the Sept. 23 staff report and minutes are attached for the Council's reference.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO., NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1437 WHICH ADOPTED A PRECISE DEVELOPMENT PLAN FOR A FIVE-UNIT PROJECT WITH COMMON OPEN SPACE AT THE SOUTHEAST CORNER OF JUAN HERNANDEZ DR. AND SAN VICENTE CT. THE AMENDMENT INCLUDES THE ADOPTION OF A NEW PRECISE DEVELOPMENT PLAN FOR FIVE SINGLE-FAMILY HOMES AND ONE GRANNY UNIT (APNs 817-60-062 thru -067) (ZA-02-12: NINA LANE-CHEN)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

- **SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- **SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- **SECTION 4.** The City Council finds that the proposed RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5. The City Council hereby approves a precise development plan as contained in that certain series of documents date stamped April 1, 2003, on file in the Community Development Department, entitled "San Vicente Estates" prepared by Hanna & Brunetti. These documents, as amended by Section 6 of this Ordinance and by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6. The precise development plan shall be amended to increase the lot depth of Lots 1 and 2 to a minimum of 80.5 feet, as measured along the adjoining property line.
- **SECTION 7.** Approval of the San Vicente Estates RPD and precise development plan shall allow the following deviations from the R-1(12,000) zoning district:
 - a. <u>Lot 1</u> A lot depth of 80.5 feet is allowed. A front yard setback of 24.5 feet is allowed.
 - b. Lot 2 A lot depth of 80.5 feet is allowed. A front yard setback of 19.5 feet (as measured from the Juan Hernandez Drive property line) is allowed.

City of Morgan Hill Ordinance No. , New Series Page 2

- **SECTION 8.** With the exception of the deviations allowed under Section 7 of this Ordinance, buildout of the San Vicente Estates project shall comply with the site development standards of the R-1(12,000) zoning district. Any additions/modifications to the approved building plans shall also comply with the site development standards of the R-1(12,000) zoning district.
- **SECTION 9.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- **SECTION 10.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of October 2003, and was finally adopted at a regular meeting of said Council on the 5th Day of November 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

| AYES: NOES: ABSTAIN: ABSENT: | COUNCIL MEMBERS: COUNCIL MEMBERS: COUNCIL MEMBERS: COUNCIL MEMBERS: | | |
|---------------------------------------|--|-----------------------|--|
| ATTEST: | | APPROVED: | |
| Irma Torrez | , City Clerk | Dennis Kennedy, Mayor | |

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No., New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th Day of November, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

| DATE: | |
|-------|-------------------------|
| | IRMA TORREZ, City Clerk |

ORDINANCE NO., NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMP-02-01: NINA LANE – CHEN (APNs 817-60-062 thru -067) (DA-02-11: NINA LANE - CHEN)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 02-37, adopted May 14, 2002, has awarded allotments to a certain project herein after described as follows:

Project Total Dwelling Units

MMP-02-01: Nina Lane – Chen

5 allotments (three detached, two attached);
Fiscal Year 2003-04

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

City of Morgan Hill Ordinance No. Page 2

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of October 2003, and was finally adopted at a regular meeting of said Council on the 5th Day of November 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

| AYES: | COUNCIL MEMBERS: | |
|--------------------------|---|---|
| NOES: | COUNCIL MEMBERS: | |
| ABSTAIN: | COUNCIL MEMBERS: | |
| ABSENT: | COUNCIL MEMBERS: | |
| ATTEST: | | APPROVED: |
| | z, City Clerk | Dennis Kennedy, Mayor |
| CALIFORN , New Series | RMA TORREZ, CITY CLI IIA, do hereby certify that the formation, adopted by the City Council of | OF THE CITY CLERK ERK OF THE CITY OF MORGAN HILL pregoing is a true and correct copy of Ordinance No f the City of Morgan Hill, California at their regular |
| meeting held | on the 5 th Day of November, 20 | 003. |
| WIT | NESS MY HAND AND THE | SEAL OF THE CITY OF MORGAN HILL. |
| DATE: | | |
| | | IRMA TORREZ, City Clerk |

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

Recorded at the request of and when recorded mail to:

City of Morgan Hill Community Development Department 17555 Peak Avenue Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

| This Agreement entered into this | day of | , 2003, by |
|--|------------------------|---------------------------|
| and between Emily Chen of The E&H 3 rd FLP, | under the Agreement. | ("Property Owner") and |
| the CITY OF MORGAN HILL, a municipal con | rporation organized an | d existing under the laws |
| of the State of California (the "City"). | | C |

RECITALS

This Agreement predicated upon the following facts:

- A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;
- B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;
- C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;
- D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);
- E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;
- F. On November 5, 2003, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on December 5, 2003.

NOW, THEREFORE, the parties agree:

- 1. <u>Definitions</u>. In this Agreement, unless the context otherwise requires:
 - (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
 - (d) "Real Property" is the real property referred to in Paragraph 3 below.
- 2. <u>Exhibits</u>. The following documents are referred to in this Agreement, attached and made a part by this reference:

Exhibit "A" - Development Allotment Evaluation

Exhibit "B" - Development Review and Approval Schedule

Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

- 3. <u>Description of Real Property</u>. The real property which is subject to this Agreement is described in Exhibit "C".
- 4. <u>Interest of Property Owner</u>. Property Owner represents that he has a legal or equitable interest in the real property.
- 5. <u>Assignment</u>. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.
- 6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.
- 7. <u>Relationship of Parties.</u> Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. <u>City's Approval Proceedings for Project</u>. On May 14, 2002, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MMP-02-01: Nina Lane - Chen, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of five single family homes (three detached, two attached) as approved by the City of Morgan Hill Planning Commission, or as amended by the Architectural Review Board.

9. Changes in Project.

- (a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.
- (b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.
- (c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.
- (d) In the event the developer is unable to secure construction liability insurance because the project contains two attached dwellings, the developer may convert the attached units into modified setback dwellings, subject to the review and approval of the Architectural Review Board. A modified setback dwelling is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for the modified setback dwellings, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow modified setback dwellings.

10. <u>Time for Construction and Completion of Project.</u>

(a) <u>Securing Building Permits and Beginning Construction</u>. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

- (b) <u>Progress Reports Until Construction of Project is Complete</u>. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.
- (c) <u>City of Morgan Hill to Receive Construction Contract Documents</u>. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.
- (d) <u>Certificate of Completion</u>. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.
- 11. <u>Hold Harmless</u>. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

- 12. <u>Insurance</u>. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.
- (a) <u>Compensation Insurance</u>. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

- (b) <u>Public Liability and Property Damage Insurance</u>. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).
- (c) <u>Additional Insured.</u> Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.
- 13. <u>Cancellation of Insurance</u>. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.
- 14. <u>Specific Restrictions on Development of Real Property</u>. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single-family Low and zoning classification of R-1(12,000)/RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:
 - (a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

- (d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.
- (e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.
- (f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.
- (g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

- (h) Property Owner agrees to include the following <u>safety</u> features in the development:
 - (i) Fire escape ladders for upper floor bedrooms
 - (ii) One mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 sf floor space, plus one extinguisher for each additional 1,500 sf floor space
 - (iii) Outdoor lighting per police department specifications
 - (iv) Illuminated or self luminous address numbers for each unit and painted curb numbers where possible
 - (v) Noncombustible siding materials on at least 50 percent of units, on at least 50 percent on an individual unit
 - (vi) Intrusion and fire alarm systems monitored by a central station, or auto dialer which meets city ordinance; intrusion alarms to provide supervision of all doors and windows
 - (vii) Automatic earthquake shut-off valves for gas service
- (i) Property Owner agrees to include the following <u>open space and landscape</u> improvements in the development:
 - (i) One, 24-in. box tree from city-approved list (with minimum height of nine feet and spread of three to four feet) for each 10 site trees
 - (ii) Varied front yard landscaping installed by developer
 - (iii) Deciduous trees planted along south facing side of homes
 - (iv) Two, 24-in. box street trees from city approved list per lot, three per corner lot
 - (v) Drought tolerant grasses used for lawn areas; no more than 25 percent of landscape area shall be covered with lawn (calculation exclusive of park landscaping)
 - (vi) Automatic irrigation system with minimum three separate valves and circuits for trees; shrubs and groundcovers; and lawn areas. A separate valve shall be provided for the following areas: front lawn, rear lawn, and for trees, shrubs and groundcover (combined) where viable. If trees, shrubs and groundcover cannot be combined under one valve, a separate valve for trees shall be provided resulting in a minimum of four separate valves required.
 - (vii) Water conserving irrigation system
 - (viii) Non-irrigated hardscape on at least 15 percent of landscape area (pedestrian walkways across circulation aisles excluded from calculation)
 - (ix) Water conserving plants contained on City's Selected Plant List will be used for at least 50 percent of all plant material
 - (x) Landscaping in all areas visible from public and private rights-of-way
- (j) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.
- (k) Property Owner agrees to purchase **double** transferable development credits (TDCs) based on the ratio of one TDC for every 25 dwelling units subject to this development potential transfer mechanism. Property Owner shall pay an in-lieu open space fee equal to $10/25^{th}$ of the purchase price of a TDC. The amount of the in-lieu open space fee shall be divided by the number of units in the project (five) and collected on a per unit basis prior to issuance of a building permit. The amount of the open space fee shall be determined at the time of issuance of building permit, and based on the average cost per dwelling unit for an equivalent TDC commitment as specified above. The open space fee shall be adjusted annually in accordance with the annual percentage increase or decrease in the median price of a single-

family detached home in Santa Clara County. The base year from which the annual percentage change is determined shall be January 1, 1996. The base year may be adjusted by City Council Resolution prior to the filing deadline for each competition year.

- (l) Property Owner agrees to include the following <u>affordable housing</u> features in the development:
 - (i) Property Owner agrees to pay **double** the standard housing mitigation fee computed at 10 percent of the total project, payable to the City of Morgan Hill, prior to the issuance of the third building permit.
- (m) Property Owner agrees to include the following <u>construction</u> features in the development:
 - (i) Title 24 calculations shall demonstrate 15 percent less energy use than allowed for each unit. This will be accomplished by using EPA "Energy Star" labeled windows with low-e coatings and vinyl or metal frames, high efficiency gas furnace of 90 percent efficiency rating or greater, high-efficiency HVAC system for all units designed with two to four zones of heating and cooling, and air conditioning units with high efficiency condensing unit with a SEER rating of 12 or higher.
 - (ii) Household water conservation techniques, including: recirculating hot water system with demand pumping and point of use water heaters
 - (iii) Cast-iron drainage pipe and piping insulation between floors
 - (iv) Phone lines from all habitable rooms that run directly to a main phone box rather than looping, using RJ6 wiring for television/video and CAT5R or equivalent for telephone lines
 - (v) Class A roof covering for all units
 - (vi) Subfloors of each dwelling unit glued and screwed
 - (vii) TJI floor joists, floor JST System
 - (viii) Sound deadening board and fiber glass batt wall insulation for interior walls
 - (ix) Gas lines to dryer pre-plumbed along with 220 volt outlet
 - (x) Garages finished with GYD wall board-tape, stipple painted
 - (xi) Construction-waste reduction measures, including: source separated and recycled drywall, source separated wood waste for recycling or composting, and source separated and recycled cardboard containers and boxes
- (n) Property Owner agrees to include the following <u>site planning and architectural</u> features in the development:
 - (i) Balconies and/or porches for each home
 - (ii) Minimum of two different roof lines and two different roof pitches throughout project
 - (iii) Consistent level of architectural relief and detailing on all four building elevations, including third dimensional design elements on second story rear and/or side elevations
 - (iv) Different color palette for each home
 - (v) Minimum 75 percent of unit entrances visible from public right-of-way
 - (vi) Minimum five-ft front and rear setback variation between adjoining units
 - (vii) Side-loading garages for at least 25 percent of project

- (viii) Air conditioning units located away from side yard areas
- (o) The Property Owner agrees to provide the following <u>Storm Drain</u> improvements:
 - (i) Design of public facilities shall meet all City standards.
 - (ii) Contribute \$1,000 per unit to off-site storm drain improvement fund
 - (iii) Contribute \$1,000 per unit to capital improvements programs fund
- (p) The Property Owner agrees to provide the following <u>park and recreation</u> improvements:
 - (i) Pay a fee to City equal to the value of land prescribed for dedication, pursuant to Morgan Hill Municipal Code Chapter 17.28
 - (ii) Provide bike lane on Juan Hernandez Drive, consistent with City's Bikeways Master Plan.
 - (iii) Pay triple the required in lieu park fees
- (q) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.
- (r) The project shall provide the following information, by address for each unit, to the Community Development Department:
 - (i) Date of sale
 - (ii) The number of bedrooms
 - (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

- (a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.
- (b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.
- (c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

- (d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.
- (e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.
- 16. <u>State or Federal Law.</u> In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

- (a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.
- (b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.
- 18. <u>Amendment or cancellation of Agreement</u>. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.
- 19. <u>Enforcement</u>. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.
- 20. <u>Termination of Agreement</u>. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:
- (a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;
- (b) Property Owner gives the City written notice of its decision to terminate this Agreement;
- (c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or
- (d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.
- 21. <u>Default by Property Owner</u>. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

- (a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;
- (b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.
- 22. <u>Default by the City of Morgan Hill</u>. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:
- (a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.
- (b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.
- (c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

- (a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.
- (b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

- (b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:
 - (i) Punitive damages;
 - (ii) Damages for lost profits;
 - (iii) Damages for expenditures or costs incurred to the date of this Agreement.
- (c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.
- 25. <u>Attorneys Fees and Costs.</u> If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.
- 26. <u>Notices</u>. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill: Community Development Department

City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037

With a copy to: City Clerk

City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037

Property Owner: Emily Chen

The E&H 3rd FLP

21009 Seven Springs Parkway

Cupertino, CA 95014

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. <u>Force Majeure</u>. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefore, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

- (a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may is permissive.
- (b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.
- (c) This writing contains in full, the final and exclusive Agreement between the parties.
- (d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

| APPROVED AS TO FORM: | CITY OF MORGAN HILL |
|--------------------------------|---------------------------------------|
| HELENE LEICHTER, City Attorney | J. EDWARD TEWES, City Manager Attest: |
| | IRMA TORREZ, City Clerk |
| | PROPERTY OWNER(S) |
| | |
| | |

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE ACKNOWLEDGED BY A NOTARY)

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MMP-02-01: Nina Lane - Chen

(See Entire Documents on File in the Community Development Department - City Hall) CITY OF MORGAN HILL

- 14 - **EXHIBIT "B"**

FY 2003-04 DEVELOPMENT SCHEDULE MMP-02-01: NINA LANE - CHEN

I. SUBDIVISION AND ZONING APPLICATIONS

Applications Filed: September 3, 2002

II. SITE REVIEW APPLICATION

Application Filed: September 3, 2002

III. LOT LINE ADJUSTMENT SUBMITTAL

Submit plans to Public Works: October 10, 2003

IV. BUILDING PERMIT SUBMITTAL

Submit plans to Building Division for plan check: December 15, 2003

V. BUILDING PERMITS

Obtain Building Permits: March 31, 2004 Commence Construction: June 30, 2004

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit **three** (3) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 3 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

LEGAL DESCRIPTION MMP-02-01: NINA LANE - CHEN

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

Parcel One:

All of Parcel 4, as shown on that parcel Map entitled, "All of Lot 66 of the Catherine Dunne Ranch Map No. 5, Recorded in Book "I" of Maps, page 53, Recorded May 9, 1980 in Book 463 of Maps, page 13.

Parcel Two:

An undivided 1/8 interest in and to that certain Well Site and appurtenances described as follows:

Beginning on a line that is measured parallel to and distant 120 feet Southwesterly of and at right angles to Southwesterly line of that certain parcel of land described in the Deed to the State of California, Recorded October 7, 1968 in Book 8288 of Official Records, Page 92, distant thereon S. 24° 39' E. 205 feet from the Southeasterly line of San Pedro Avenue; thence from said point of beginning S. 24° 39' E. along said parallel line, 20.00 feet; thence S. 65° 21' W. 20.00 feet; thence N. 24° 39' W. 20.00 feet; thence N. 65° 21' E. 20.00 feet to the point of beginning.

Parcel Three:

A non-exclusive easement over a strip of land 10.00 feet wide for the installation and maintenance of a water pipeline together with ingress and egress, the Northwesterly line of which is described as follows:

Beginning on a line that is measured parallel to and distant 120 feet Southwesterly of and at right angles to the Southwesterly line of that certain parcel of land described in the Deed to the State of California, Recorded October 7, 1968, in Book 8288 of Official Records, page 92, distant thereon S. 24° 39' E. 205 feet from the Southeasterly line of San Pedro Avenue; thence S. 65° 21' W. 20.00 feet to the true point of beginning of the line to be described; thence from said true point of beginning S. 65° 21' W., 205 feet, more or less, to the Southwesterly line of Lot 67 of the Map of Catherine Dunne Ranch, Map No. 5 and the termination of said line.

Parcel Four:

An undivided ½ interest in the water well described as follows:

Being a portion of Parcel 3, as shown on that certain Parcel Map Recorded in Book 463 of Maps, page 13, Santa Clara County Records, and more particularly as easement for the construction and maintenance of a well, related waterlines and appurtenances over, upon, across and under a 10' x 10' parcel of land described as follows:

Beginning at a point of the Southerly line of Lot 3 which is distant South 64° 31' 00" West 70.00 feet from the Southeasterly corner of Lot 3 as shown on said parcel Map, said corner also being the centerline of Nina Lane; thence along said Southerly line South 64° 31' 00" West 10.00 feet; thence North 25° 29' 00" West 10.00 feet; thence North 64° 31' 00" East 10.00 feet; thence South 25° 29' 00" East 10.00 feet to the point of Beginning.

Parcel Five:

An easement for ingress and egress and the installation and maintenance of public utilities over Nina Lane, as shown on Parcel Map filed for Record May 9, 1980 in Book 463 of Maps, page 13.

Assessor's Parcel No.: 817-60-021



ZA-03-13: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT/ATTACHED HOUSING

RECOMMENDED ACTION(S):

- 1. Open/close Public Hearing
- 2. Waive the First and Second Reading of Ordinance
- 3. Introduce Ordinance

EXECUTIVE SUMMARY:

Agenda Item # 23

Prepared By:

Associate Planner

Approved By:

CDD Director

Submitted By:

City Manager

At the October 1 Council meeting, the Council provided direction to Staff to prepare a comprehensive ordinance which would allow local developers to incorporate 'modified setback dwellings' in their residential projects in lieu of attached housing. The intent of the comprehensive ordinance is to prevent significant delays in the construction of new housing due to insurance issues surrounding ownership attached housing.

In general, the attached comprehensive ordinance includes the following provisions:

- 1. An amendment to the 'attached dwellings' definition of the Municipal Code to include modified setback dwellings;
- 2. The addition of 'modified setback dwelling' and 'Z-lot' definitions to the Municipal Code;
- 3. Eligibility criteria and design standards for modified setback dwellings; and
- 4. Review procedures for current and future projects proposing to incorporate modified setback dwellings.

The provisions of the comprehensive ordinance represent the recommendations of the Planning Commission's Attached Housing Subcommittee. The Subcommittee considered including an automatic six-month extension of time for Fiscal Year 2003-04 allotments. However, the Subcommittee did not feel extensions of time would be necessary with the adoption of the comprehensive ordinance.

The comprehensive ordinance will be reviewed by the Planning Commission at the October 14 meeting. A verbal presentation discussing the outcome of the Commission meeting will be provided at the October 15 Council meeting. For the Council's reference, a copy of the October 14 Commission staff report is attached.

FISCAL IMPACT: No budget adjustment required.

ORDINANCE NO.

- AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ALLOWING MODIFIED SETBACK DWELLINGS IN RESIDENTIAL PROJECTS DUE TO CONSTRUCTION LIABILITY INSURANCE ISSUES SURROUNDING OWNERSHIP ATTACHED HOUSING (ZA-03-13: CITY OF MORGAN HILL ZONING TEXT AMENDMENT/ATTACHED HOUSING)
- **WHEREAS**, a goal of the Morgan Hill General Plan is to provide "a variety of housing types and densities available to all residents"; and
- **WHEREAS**, a goal of the Morgan Hill Affordable Housing Strategy is to provide a variety of housing for all income levels, specifically housing for moderate income levels; and
- **WHEREAS**, attached housing, including BMR units, provide housing opportunities for all income levels, but specifically for low and moderate income levels; and
- **WHEREAS**, during the Measure P process, a majority of the current and Measure P approved projects committed to provide attached housing; and
- **WHEREAS**, Measure P approved projects are required to adhere to a strict development schedule during the Fiscal Year for which allotments were awarded; and
- **WHEREAS**, allotments awarded for Fiscal Year 2003-04 are facing impending Measure P deadlines; and
- WHEREAS, construction liability insurance for projects with ownership attached housing is no longer available to many local subcontractors; and
- WHEREAS, construction liability insurance for projects with ownership attached housing has become increasingly difficult to obtain and cost prohibitive for local developers; and
- **WHEREAS**, the insurance issue threatens to impede Morgan Hill developers from fulfilling their Measure P commitments to provide below market rate (BMR) housing and attached housing in Morgan Hill; and
- **WHEREAS**, immediate action is needed to address the attached housing issue to prevent delays in the entitlement and construction process for projects with Measure P allotments; and
- **WHEREAS**, the Home Builders' Association is working with the state legislature to develop solutions to the insurance crisis relating to attached housing; although, it is not likely that a solution will be obtained in the near future; and
- **WHEREAS**, local developers have requested the enactment of an ordinance to allow the construction of modified setback dwellings, or dwellings physically separated but architecturally connected by a design element to give the appearance of attachment; and

WHEREAS, modified setback dwellings will provide greater architectural continuity in neighborhoods consisting primarily of detached dwellings; and

WHEREAS, the separation of attached units will allow for the addition of architectural features such as windows, which will enhance the appearance of the homes and improve the function of the interior spaces; and

WHEREAS, the City has reviewed all other alternatives to the ordinance, including a no action alternative, and has determined that an ordinance allowing modified setback dwellings is the only feasible solution to prevent significant delays in the construction of new housing in Morgan Hill; and

WHEREAS, in the event changes in the insurance industry occur as a result of the efforts of the Home Builders' Association, this Ordinance is proposed to remain in effect for a period of twenty-four (24) months; and

WHEREAS, such request was considered by the City Council at their regular meeting of October 15, 2003, at which time the City Council approved the ordinance; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

- SECTION 1. The Ordinance is consistent with the RPD, Residential Planned Development Overlay District of the Zoning Ordinance, which is intended to permit and encourage flexibility of site planning, with appropriate safeguards and controls for residential development, by allowing variations from the standards specified elsewhere in Division I of Title 18 of the Municipal Code. All projects containing modified setback dwellings will be required to have a Residential Planned Development (RPD) Overlay Zoning.
- SECTION 2. The Ordinance is consistent with the General Plan. Construction of modified setback dwellings allows developers to build a variety of housing for all income levels, as required by the General Plan.
- SECTION 3. The Ordinance is consistent with Measure P, and will not result in the reduction of points for Measure P projects. The definition of attached housing will be amended to include modified setback dwellings; therefore, the number of housing types provided by a project will not be altered by this Ordinance. Developers will be required to provide an equal number of modified setback dwellings in their respective projects as identified in the Measure P application as attached housing.
- **SECTION 4.** The City Council hereby finds that the change from an attached dwelling to a modified setback dwelling is a minor change under the provisions of paragraph 9 of the standard residential development agreement.

- SECTION 5. The City Council hereby finds that the Ordinance does not violate the general spirit or intent of the General Plan, Zoning Ordinance, or Residential Development Control System, nor does it violate previously approved project entitlements including RPD zoning, subdivision, development agreement and architectural & site review approvals.
- **SECTION 6.** A comprehensive ordinance to allow the use of modified setback dwellings is needed for the following reasons, as well as the recitals above:
 - a. Measure P projects are subject to strict development schedules which require dwelling units to be built within a specified timeframe. Requiring developers to go through the standard review process to amend City standards, project plans and project development agreements to allow modified setback dwellings would result in lengthy delays in the project.
 - b. Project delays could result in significant delays in the production of housing, both attached and detached, in Morgan Hill.
 - c. Delays in the production of housing would delay the City from fulfilling the Affordable Housing Strategy and General Plan goal to provide its fair share of housing for all income levels.
- **SECTION 7.** Section 18.04.154 of the Morgan Hill Municipal Code is hereby amended to read as follows:
 - 18.04.154 Dwelling, single-family, attached.

"Single-family attached dwelling" means a dwelling attached to another dwelling on at least 50 percent of the length of the attached side of the building, sometimes called a townhouse, duet or row house. One or more walls extend from foundation to roof, which separate it from adjoining structures and form a property line. Single-family attached dwellings also include modified setback dwellings as defined by the Morgan Hill Municipal Code.

SECTION 8. Section 18.04.156 is hereby added to the Morgan Hill Municipal Code as follows:

18.04.156 Dwelling, single-family, modified setback.

- A "modified setback dwelling" is defined as follows:
- A. A dwelling physically separated from an adjacent dwelling on a separate lot of record by a minimum of three feet and a maximum of six feet, and architecturally connected by a design element such as a wing wall, trellis, or fireplace, to give the appearance of attachment; or
- B. A dwelling physically separated from an adjacent dwelling on a separate lot of record whereby the adjacent lots are designed with an alternative lot configuration, such as a Z-lot or off-set property lines, and

the units are situated such that they give the appearance of attachment from the public right-of-way.

SECTION 9. Section 18.04.272 is hereby added to the Morgan Hill Municipal Code as follows:

18.04.272 Lot, Z.

A "Z-lot" is a lot in which the interior side property line(s) form the letter 'z.'

- **SECTION 10.** This Ordinance hereby allows developers to build modified setback dwellings in lieu of standard attached dwellings, subject to the following eligibility criteria:
 - a. Only Measure P allotments awarded for Fiscal Year 2004-05 and earlier and allotments for which building permits are issued by June 30, 2005 are eligible for the modified setback dwellings.
 - b. Evidence shall be provided to the satisfaction of the City that the developer is unable to obtain construction liability insurance specifically due to the inclusion of attached housing in the project.
- **SECTION 11.** Modified setback dwellings shall be designed to comply with the following design standards:
 - a. <u>Duet units</u> a zero side yard setback is allowed on one side of one of the duet units.
 - b. <u>Single-family Attached Housing Consisting of Three Units</u> zero side yard setbacks are allowed on both sides of the center unit and on the outer side yards of the end units.
 - c. <u>Single-family Attached Housing Consisting of Four or More Units</u> lots for each unit shall be designed large enough to accommodate a zero setback on one side and a minimum three-ft setback on the other side.
 - d. Minimum separation between dwellings shall be three feet.
 - e. Maximum separation between dwellings shall be six feet, except as allowed under subparagraph (f), below.
 - f. A maximum separation between adjacent dwellings shall not be required for modified setback dwellings on alternative lot configurations, such as z-lots or lots with off-set property lines, provided that the adjacent dwellings give the appearance of attachment from the public right-of-way.
 - g. Side yard setbacks adjacent to single-family detached dwellings shall be a minimum of five feet.
 - h. The side yard setback along the side street property line of a corner lot shall be a minimum of 15 feet.
 - i. In no case shall front or rear yard setbacks be reduced to less than 20 feet in depth, unless previously approved by the City Council as part of an RPD Overlay District.

- j. Architectural treatment, such as a wing wall, trellis, staggered fireplaces along the separated wall of both units, or other similar treatment, shall be provided in between modified setback dwellings to give the appearance of attachment, although, the units will be physically detached.
- k. Should a fence be constructed between the modified setback dwellings, a gate shall be provided allowing access from the front yard to the side yard area.
- 1. Eaves and overhangs may encroach over property lines, subject to compliance with building code standards and provided appropriate easements and Covenant, Conditions & Restrictions (CC&Rs) are recorded.
- m. A deed restriction shall be recorded over every modified setback lot prohibiting future building additions on either side of the homes, unless the additions comply with the site development standards of the underlying zoning district.
- n. For adjacent dwellings with minimum three-ft and maximum six-ft separations, primary access and exclusive use of the adjoining side yard area shall be granted to the property owner with the greater side yard width. Secondary access shall be granted to the adjacent property owner for maintenance of the exterior wall. An easement shall be recorded over the adjoining side yard area granting access to the adjacent property owner for maintenance of the exterior wall, and CC&Rs shall be recorded granting the exclusive and reasonable use of the adjoining side yard area to the appropriate property owner, with restrictions to minimize potential conflicts.
- o. A closed pipe system providing positive drainage shall be provided between modified setback dwellings.
- p. Gutters connected to a closed pipe drainage system shall be provided for all modified setback dwellings. CC&Rs shall be recorded requiring property owners to maintain rain gutters to minimize impacts to the adjacent property(ies).
- q. Modified setback dwellings shall be designed in full compliance with 2001 Uniform Building Codes.
- r. All projects containing modified setback dwellings shall have an approved RPD Overlay Zoning.
- SECTION 12. The setback standards outlined in this Ordinance supersede the setback provisions of the current Morgan Hill Zoning Ordinance for the duration of the Ordinance. All other site development standards of the current Zoning Ordinance, including but not limited to density, lot coverage, building height and open space requirements, shall still apply, except as otherwise permitted under RPD variations approved by the City Council.
- SECTION 13. Projects eligible to incorporate modified setback dwellings that have obtained architectural and site review approval prior to the enactment of this Ordinance, shall be subject to architectural review and approval by the Architectural Review Board (ARB) Subcommittee.

- SECTION 14. For projects eligible to incorporate modified setback dwellings that have obtained RPD approval prior to the enactment of this Ordinance, the Council hereby authorizes Planning Staff to review and approve amendments to the established precise development plans to incorporate the modified setback dwellings.
- SECTION 15. This Ordinance may be extended to allow modified setback dwellings for Measure P allotments awarded for Fiscal Year 2005-06 and allotments for which building permits are issued by June 30, 2006, subject to the approval of the City Council.
- SECTION 16. Projects with Measure P allotments awarded for Fiscal Year 2004-05 and allotments for which building permits are issued by June 30, 2005 shall be subject to the requirements listed below. Should the City Council extend this Ordinance, allotments awarded for Fiscal Year 2005-06 and allotments for which building permits are issued by June 30, 2006 shall also be subject to the following requirements:
 - a. Projects shall adhere to the standard Measure P development schedule. No extensions of time shall be granted due to delays resulting from insurance issues, unless otherwise approved by the City Council.
 - b. Projects shall be subject to the standard development review process, including RPD zoning, subdivision, development agreement and architectural & site review approval. All development applications shall include plans for both attached dwellings and modified setback dwellings, to be reviewed and approved by the appropriate reviewing bodies.
- **SECTION 17.** Future Measure P applications may be subject to the following requirements:
 - a. Applications may include plans for both attached dwellings and modified setback dwellings. For the purposes of the 'Housing Types' Category, modified setback dwellings are attached dwellings.
 - b. Project development agreements may include language which would allow the use of modified setback dwellings in the subject project should the Council finds that there continues to be a need for this type of housing product, and that the need is likely to exist at the time the Developer is required to pull building permits and commence construction.
- SECTION 18. This Ordinance shall automatically expire and be of no further force and effect at the end of twenty-four (24) months after the date of enactment, unless extended by the City Council with appropriate findings and resolutions.
- SECTION 19. At the end of twelve (12) months after the enactment of this Ordinance, the Planning Commission shall hold hearings to review the progress and status of the modified setback dwellings. The Planning Commission shall then forward a recommendation to the City Council to either extend or terminate this Ordinance.

City of Morgan Hill Ordinance No. Page 7

- **SECTION 20.** The Council, upon appropriate findings, may revoke this Ordinance prior to the expiration of the Ordinance. If no action is taken by the City Council, the Ordinance shall remain in effect until its expiration date.
- SECTION 21. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 22. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of October 2003, and was finally adopted at a regular meeting of said Council on the 5th Day of November 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST: APPROVED:

Irma Torrez, City Clerk Dennis Kennedy, Mayor

EXECUTE OF THE CITY CLERK 03

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No., New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th Day of November, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

| DATE: | |
|-------|-------------------------|
| | IRMA TORREZ, City Clerk |



STANDARDS FOR INTERIM DEVELOPMENTS RECOMMENDED ACTION(S):

Council Discretion

EXECUTIVE SUMMARY: During the planning of the South County Dayworker Center being constructed at the corner of Main and Depot, the

Agenda Item #24

Prepared By:

Assistant to the City Manager

Submitted By:

City Manager

Dayworker Committee has proceeded with the design of a site that is in full compliance with all of the City's requirements. While the Center has only a three-year lease and believes that it will be at this location for a maximum of five years, the Municipal Code does not provide staff, the Planning Commission, or the Council with the ability to relax the requirements for on-site developments at "interim" land uses. Under this scenario, the on-site improvements and construction alone will cost approximately \$200,000 and may have to be removed later for the subsequent "permanent" use.

The off-site improvements to the street will be paid for by a RDA loan to the property's owner previously approved by the RDA Board.

In the attached letter, the Dayworker Committee has asked the City to consider changing the Municipal Code to provide the City Council with the ability to exercise its discretion in relaxing the on-site development requirements relating to "interim" uses. In a practical sense, the Committee believes that it is an unnecessary waste of time and resources to build permanent parking lots with lights at the Center that will need to be removed in five years when the site is redeveloped. In addition, they would like to be able to defer the installation of the landscaping until after the Center is occupied. These changes will enable the Committee to complete construction of the interim Center at a lower overall cost.

From the City's perspective, the Zoning Code requires installation of certain facilities, such as parking lots, because there are no guarantees that a particular use would only be "interim."

The Committee is asking the City Council to consider amendments to the Zoning Code which would establish standards for relaxing the requirements in circumstances similar to those of the Dayworker Center. In order to do so, the Council would need to refer the issue to the Planning Commission as changes to the Zoning Code must first be considered by the Commission.

An alternative would be for the RDA or City to actually pay for the on-site improvements pursuant to an agreement, but the Dayworker Committee is not asking for this financial assistance. They are asking, however, for the City to waive, reduce, or defer the fees associated with this development. A listing of the fees associated with the project is also attached.

FISCAL IMPACT: Any waiver, reduction, or indefinite deferment of fees will negatively affect the fund balances of the related funds directly. Furthermore, assistance provided in this form could lead to numerous similar requests. It has been the City's policy to not engage in this form of assistance – but rather to pay the fees from RDA or other economic assistance funds - when nonprofit applicants have made similar requests.



CITY COUNCIL STAFF REPORT MEETING DATE: OCTOBER 15, 2003

SENIOR SPACES AT THE INDOOR RECREATION CENTER

RECOMMENDED ACTION(S): Determine if the nutrition site remains in the indoor recreation center; recognize spaces no longer part of the schematic design that affect programming specifically for seniors and youth; determine if Council wants to establish policies regarding senior and youth programming at subsidized levels.

| Agenda | Item | # | 25 |
|--------|------|---|----|
| | | | |

Prepared By:

Manager, Recreation & Community Services

Submitted By:

City Manager

EXECUTIVE SUMMARY: Per Council direction, staff reviewed the senior programming spaces in the indoor recreation center with the Senior Advisory Committee (SAC) on October 7, 2003. Staff presented the draft schematic design that reflects the building scope modifications necessary to meet Council's capital budget for the project.

The SAC did not provide a recommendation regarding the nutrition program but did comment that their impression was the senior areas were being designed for the main purpose of nutrition services in lieu of other senior programming possibilities. Catholic Charities, provider of the senior nutrition program, have expressed their preference to be included in an overall senior program and not be separated into different sites. Staff agrees as there was no definitive direction provided that would revise this recommendation.

Although the SAC did not take a formal position, members individually expressed their concerns regarding the programming spaces. They expressed concern that the process does not provide any real input into the design of the building and asked for more details on the senior programming aspects of the facility. They specifically requested a programming requirements document providing operating detail on the proposed spaces. Staff is working with the architect to provide this.

The senior members specifically called out for three programming areas: 1. Technology/computer room 2. Classrooms 3. Separate kitchen with oven/stove for use during the day. Council needs to provide staff with direction in this matter, as these spaces are no longer part of the design.

In the course of the discussion, senior members expressed other issues of equal importance. They commented that the current level of programming was not adequate. They expressed a desire for more city-wide and Community and Cultural Center senior programming. This may require a senior services policy that provides clarification of the Council's philosophy regarding programming and subsidy, either in program fees or facility rental. This would also reflect on the cost recovery of the IRC, as seniors will be charged a fee to utilize the pool, weight, fitness, and gym areas. The SAC also expressed a desire to have a dedicated staff person to coordinate senior programming.

FISCAL IMPACT:

The draft indoor recreation center schematic design is within budget but any expansion of spaces would require additional funding. If the policy regarding fee based programming and facility rentals change with increased subsidy there is a possibility that it will have an effect on the cost recovery goals of the CCC and the IRC. This impact will require further staff review. There is no budgeted position for senior services at this time.



Memorandum Recreation & Community Services

Date: October 8, 2003

To: Ed Tewes, City Manager

From: Julie Spier, Recreation & Community Services Manager

Subject: Status of the Senior Spaces at the Indoor Recreation Center

The Indoor Recreation Center is now in the final stages of schematic design. There continues to be discussion regarding the senior spaces and of particular interest the relationship of the senior nutrition program within the Indoor Recreation Center. Staff has been asked by Council to review the design with the Senior Advisory Committee and bring comments back to the Council regarding the Senior program spaces and whether there is support to remain in the Indoor Recreation Center project or continue at the Friendly Inn.

OVERVIEW

The Friendly Inn has had many programming uses over its history, including being a core facility for senior programming. A brief history of the senior spaces include:

American Legion

1. September 12, 1962 – Agreement with American Legion to transfer ownership of 4.35 bare acres of land to the City of Morgan Hill for the construction of a community center building. It was further agreed that the American Legion would be provided a meeting room (20' by 60') with kitchen exclusively for a period of fifty (50) years (year 2012).

Flower Lover's Club

 September 15, 1976 – Minutes and Resolution No. 1221 – Use of the Friendly Inn by the Morgan Hill Flower Lover's Club. Deed signed January 28, 1946 free use of the Friendly Inn of a meeting room and the kitchen or a similar community building owned by the City of Morgan Hill for a period of 69 years from September 15th, 1976. (year 2045).

The Flower Lover's Club has moved its program to the Community and Cultural Center.

3. Other Senior Center Program Users:

Italian Mothers: met using a table or two and one designated cabinet

Brown Bag: uses the American Legion room but could use a closet

Bingo: uses the senior center trailer

Cards: played daily on a few tables in the senior center.

AARP: meets in the senior center, require table and chairs and one cabinet.

Catholic Charities/Nutrition: kitchen, storage room, small office, 3 storage

cabinets, dining area for 80

Senior Coordinator: small office and 4 cabinets.

FUTURE LOCATION OF SENIOR PROGRAMS

Decisions that led to incorporating the Senior Programming as part of the Indoor Recreation Center:

9/12/00 Parks, Facilities, and Recreation Programming Master Plan: The Plan and the Senior Advisory Committee (SAC) noted in the record the following comments:

'Senior needs to be defined. Many seniors are very active and may be interested in active sports. Others are more restricted in their activities.

Programming areas of major interest: Park activities such as shuffleboard, bocce ball, lawn bowling, horseshoes; Aquatics/aqua-therapy; Dancing; Card games, dominoes, chess, bowling, sewing, knitting, crocheting; and active sports such as gymnastics, basketball, nutritional/medical services.

Review of the existing senior center noted many who currently use it do not want to move. But some felt that many seniors do not like the existing facility or location. The center, wherever it is located, should be multi-generational. If either at the existing location or the Gunderson property, it could be co-located with a youth center provided that there are designated times and/or spaces for senior use. Some seniors prefer programs that are dedicated just for seniors.

Criteria established for the Senior Center in the master plan:

- *Good transit and walking access
- *Located in a park or park-like setting, with outdoor seating, paths, shade trees, and some outdoor activities
- *Multi-generational is OK provided that there are dedicated times and/or spaces for seniors.
- *The location must feel "safe". Consider coordinating with community watch programs. Many seniors have a fear of reporting suspicious activities due to the possibility of retribution.
- *Must have a kitchen.
- *Should have lots of light.
- *Good wheelchair access, including ramps and push-button entrance door.

Master Plan, pg. Iii: Community Recreation Center: This facility would include a large gymnasium, weight room, aerobics rooms, locker rooms, rest rooms, etc. It would also include spaces for designated senior and youth programs, such as a multi-purpose room with kitchen (could be used for senior programs during the day and youth dances and concerts in the evening); game room; café/snack bar, etc. Careful site planning and programming would be needed to minimize potential conflicts between users.'

Approved per master plan January 2001.

<u>May 7, 2001</u> Parks & Recreation Commission (PRC) based their decision to support incorporating senior programming/services in the indoor recreation center (IRC) on (reported to the SAC on May 7, 2001):

- 1. Senior Nutrition Program is one component of a \$26 million project. The Commission does not want to isolate the Senior Nutrition Program at an off-site location. The Commission wants to keep all senior programs and services together at one site.
- 2. Moving the Senior Nutrition Program to the new site, will allow the estimated 3,200 square feet at the Friendly Inn, now dedicated to the Nutrition Program, to be used for other purposes.
- 3. Provide program participants with an opportunity to take part in all of the proposed activities. Range of programming would be greater at the IRC and more seniors would be served at the IRC.

The Senior Advisory Committee indicated a desire to have inter-generational activities at the new center at this time.

10/24/01: Community Feedback Sessions regarding IRC

Seniors voted (in order of importance): multi-purpose room, offices for senior social/health services, computer room, lounges, game room were needed. Program priorities: (in order of importance): social events, community meetings, lectures/classes.

<u>January 9, 2002</u>: Met with Catholic Charities/Nutrition Site Representatives, City Staff, SAC representative, YMCA representative. Catholic Charities did not have a location preference, but did indicate they did not want to have the programs split (senior nutrition and senior programming).

April 2, 2002: Presentation to SAC by staff regarding: Senior Nutrition Program site selection. Reviewed four possible sites. Follow up from presentation of March 14 and then to the PRC on March 19 for recommendation on remaining two sites (Friendly Inn and the proposed Indoor Recreation Center) as Grange and Parish Hall were no longer being considered.

April 8, 2002: Recreation Manager presentation to Senior Center participants. Reviewed: 4 sites looked at: Parish Hall, Grange, Friendly Inn (current site), and IRC. An informal survey of current Senior Nutrition Program participants indicated a nearly even split between those desiring the nutrition program to remain at the Friendly Inn (45 responses), versus those preferring a move to the IRC (42).

<u>April 16, 2002</u>: PRC received SAC recommendation for site preference for the IRC with intergenerational theme.

<u>May 7, 2002</u>: Resolution from SAC: recommending that the Kitchen facilities be constructed in two discreet and separate units: one for the Senior Nutrition Program and one for community use. This could be achieved by including two kitchens in the IRC, or, building one kitchen at the IRC and improving the kitchen at the Friendly Inn.

Includes review of senior center site visits.

<u>July 2, 2002</u>: SAC minutes: PRC consideration of SAC's resolution: to consider building separate kitchen facilities for the Senior Nutrition Program. PRC decided to keep the senior

nutrition and all senior programs together at one site at the IRC.

Please refer to staff report dated July 31, 2002 presented to City Council.

March 4, 2003 PRC receives: Public Facility Prioritization Recommendation from Senior Advisory Committee approved at Feb. 4, 2003 SAC meeting. Recommends: "High priority be given to the needs of the senior community. Highest priority to the IRC plans, which will house wings for both seniors and youth. If another facility is given a higher priority by City Council, we recommend that serious attention be given to the existing Senior Center (Friendly Inn) in terms of expansion and renovation to meet the existing program needs of our entire senior community in Morgan Hill".

June 25, 2003 Sub-committee appointments approved by Council.

<u>July 14, 2003</u> Sub-committee meets to discuss conceptual site design.

July 15, 2003: PRC receives: Recommendation of Senior Advisory Committee regarding construction schedule of the Indoor Community Recreation Center. On May 5, 2003 the SAC approved a recommendation to the PRC: stating "the construction of the IRC be accelerated to an earlier completion date of July 1, 2005 and that consideration be given to the Senior Nutrition kitchen requirements and if these needs can not be met, then the committee recommends renovating the Friendly Inn to allow the Nutrition program to remain at its current site.

We request that final design be cognizant of the fact that the Senior Nutrition Program currently being provided by Catholic Charities at the Friendly Inn requires a kitchen dedicated solely to the Nutrition Program. We again recommend that full consideration be given to Kitchen facilities that are available for all participants using the Indoor Recreation Center. Once recommendation from the Committee would be the upgrade of the current Nutrition Program site at the Friendly Inn so that the Program can remain at its current location".

Project Manager Struve reported that the sub-committee is working on pulling all of the concepts into one scheme and will meet again on July 23. PRC approved the SAC's recommendation that if the IRC's kitchen facilities couldn't meet the nutrition program's needs then the Council should consider renovation of the Friendly Inn Kitchen.

The SAC comments were forwarded to the IRC sub-committee for consideration. The SAC recommendation was presented at the sub-committee meeting of July 23, which included a representative from the SAC.

July 23, 2003: Presented to IRC sub-committee the SAC recommendation.

August 5, 2003 Staff met with SAC to discuss programming spaces.

<u>August 20, 2003</u>: Council staff report: approval of conceptual site design with exhibit A: definition of spaces with dedicated senior spaces including a reception area, lounge area, and multipurpose room and kitchen that will accommodate the senior nutrition program, senior programming and special services.

The dedicated youth and senior spaces have always been important to the program. The multipurpose room will primarily serve the senior lunch program, and is divisible into two spaces. However, the multipurpose room will also be useable by other groups when it is available. The multipurpose room could also be used for general instruction classes and community rentals.

<u>August 12, 2003</u> Staff met with County Health, Nutrition Site Representatives, Architects and confirmed the following program requirements:

- 1. A state of art kitchen (larger)
- 2. Walk-in freezer and refrigerator
- 3. Lobby
- 4. Game room, miscellaneous room for bingo, dancing, arts & crafts, meetings
- 5. Janitorial room
- 6. Storage room

PROGRAMMING

Programming for the senior spaces as a multi-generational component has not been defined at this time. This will take further review and discussion. Some advocate for joint programs with the youth, others have indicated separate activities are desired. The center is being designed for programming flexibility at this time.

Senior Spaces Comparison

| New Indoor Recreation Center | | | Friendly Inn |
|-------------------------------------|-------|------------|----------------------------|
| Senior entry/lobby/lounge | 600 | | • |
| Reception Counter | | 220 | |
| Staff Workroom | | 250 | |
| Coordinator's Office | 120 | | |
| Volunteer Office (3 workstations) | | 200 | 216 Senior offices/storage |
| Senior Conference Room | | <i>300</i> | |
| Social Services room | | 120 | |
| Restrooms (Men's & Women's) | | 300 | |
| Senior Meal/Multi-purpose Room | 2,000 | | 1,824 including entrance |
| (divisible into 2) | | | |
| Senior Meal/Multi-purpose storage | 200 | | |
| Kitchen (dedicated & shared spaces) | 600 | | 280 Kitchen |
| Senior's Pantry | | 80 | |
| Storage | | 100_ | |
| Sub-total Senior Spaces 5 | 5,190 | | 2,320 |

Senior Nutrition Programming Area: 8:00am-2:00pm Monday through Friday

100 meals

| Catholic Charity Kitchen | Shared Area | General Needs |
|----------------------------------|--------------------------------|-----------------|
| • | Triple sink | Coffee Maker |
| | Dishwasher | Refrigerator |
| | Hand washing sink | |
| | Single restroom within 200 f | feet of kitchen |
| | Food sink, drain into floor si | nk |
| Freezer (walk-in preferred) | | |
| Refrigerator (walk-in preferred) | | |
| | Mop sink-chemical storage- | anitor's closet |
| | 6-8 Burner stove and hood w | |
| | Steam table | C |
| Pantry | ~ | |
| 2 40.000 | Ice Machine | |
| Has of kitchen Cam Inm ovalusiva | 100 1,100111110 | |

Use of kitchen 8am-2pm exclusive



CITY COUNCIL STAFF REPORT

MEETING DATE: October 15, 2003

DEVELOPMENT AGREEMENT WITH MORGAN HILL LAND

,

Agenda Item # 26 Approved By:

BAHS Director

Submitted By:

City Manager

RECOMMENDED ACTION(S): Authorize the City Manager to do everything necessary and appropriate to execute a development agreement with Morgan Hill Land, LLC, including making minor modifications to the agreement, subject to review by the City Attorney.

EXECUTIVE SUMMARY:

The City Council approved an auto dealer strategy in February 2002. A component of the Strategy would offer a dealer an incentive package to locate to town if it could be demonstrated that there is a need for assistance. The parameters for assistance considered such factors as a dealer's ability to pay for land and development costs, established baselines for sales tax revenues, and the percentage of sales tax revenues to be shared above the baseline (see the attached Auto Dealer Strategy).

Morgan Hill Land, LLC is the legal entity for the proposed Ford Store for Morgan Hill. The Ford Store has requested financial assistance under the Auto Dealer Strategy. Without any assistance, the dealer indicates he could not locate his franchise in Morgan Hill. As part of our financial analysis, staff retained Conley Consulting Group (CCG) to evaluate the request for economic assistance from the Ford dealership. CCG found that this dealership in Morgan Hill would warrant assistance to bring the land and development costs into the range of costs that a dealership could support.

We are proposing the following incentive package:

- The Ford Store would receive up to a maximum total of \$1,225,000 over a ten (10) year period in sales tax rebates. The tax sharing arrangement terminates at the end of ten years regardless if the maximum \$1,225,000 has been paid to the dealer.
- The City would share 50% of the sales tax revenue collected above \$150,000 for the first year of operation based on total taxable sales of \$15 million.
- The City would share 50% of the sales tax revenue collected above \$200,000 for the second year of operation based on total taxable sales of \$20 million.
- The City would share 50% of the sales tax revenue collected above \$250,000 for each year thereafter based on total taxable sales of \$25 million.
- The City would make payments twice a year. If the dealer did not exceed the baseline threshold for a year, he would not receive any payment for the year.
- In exchange for assistance, the dealer agrees to operate a automobile dealership for 20 years. In the event of a default, the dealer would need to financially reimburse the City per the agreement.

This incentive package provides a lower baseline amount in the first two years to allow the dealer to build his business. However, the baseline amount established for subsequent years is the average annual sales for Ford dealerships in Northern California. This baseline amount, thus, rewards the dealership for being better than average and creates an incentive for the dealer to far exceed \$25 million in sales each year.

FISCAL IMPACT: Over a ten year period, the City may share \$1,225,000 in sales tax revenue with Ford. However, this financial assistance would only be available if the Ford dealership locates in town and exceeds the average in annual sales for dealerships in Northern California.

| The City of Morgan Hill | |
|----------------------------------|--|
| When Recorded Mail To: | |
| City Clerk City of Morgan Hill | |
| Community Development Department | |
| 17555 Peak Avenue | |
| Morgan Hill, CA 95037 | |

Space above this line for Recorder's Use

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
MORGAN HILL LAND, LLC

Recording Requested By:

DEVELOPMENT AGREEMENT

| This Developm | ent Agreement (hereafter | "Agreement") is made | and entered into as of the |
|-------------------------|--------------------------|-------------------------|-----------------------------|
| day of | ,, (the "Effectiv | e Date") by and between | the City of Morgan Hill, |
| municipal corporation (| ("City") and Morgan Hill | Land, LLC, a Californi | a limited liability company |
| ("Developer"). | | | |

RECITALS

WHEREAS, Developer is the legal or equitable owner of the property ("Property") governed by this agreement, located at **[fill in property description/APN/address]** in Morgan Hill, Santa Clara County, California, as more fully described in <u>Exhibit A</u> attached hereto and incorporated herein by reference; and,

WHEREAS, Developer has, or will be submitting an application for the following land use approvals ("Approvals") affecting the Property, with the stated intent of building a facility intended for use as an automobile dealership and consisting of approximately twenty-five thousand (25,000) square feet (the "Project"), which is to be situated on approximately six (6) acres; and,

WHEREAS, Developer is willing, pursuant to the terms of this Agreement, to make expenditures and provide benefits to the City, including, without limitation, construction of off-site improvements as provided under the Conditions of Approval for the Project; and,

WHEREAS, in recognition of the benefits to be conferred upon the City from development of the Property, both economic and through improvement of infrastructure, the City is willing to assist Developer by the provision of economic assistance as provided under this Agreement; and,

WHEREAS, in consideration for the benefits conferred upon it by this Agreement, Developer agrees to enter into a covenant regarding the operation of its business, for a specific duration; and,

WHEREAS, the purpose of this Agreement is to facilitate the implementation of the principles outlined above, realizing the public benefits to City and private benefits to Developer described in these Recitals, because the development of the Project requires a major investment by the Developer and the City in public facilities, substantial investment in on-site and off-site improvements, dedications of land, participation in other programs for public benefit and purposes, and substantial commitments of the resources to achieve both private benefits of the Project for the Developer and the public purposes and benefits of the Project for the City; and,

WHEREAS, the willingness of the City to enter into this Agreement is a material inducement to Developer to implement the Project and but for which the Project would not be feasible, and Developer proposes to enter into this Agreement in order to obtain assurance from the City regarding the timing and extent of the economic assistance outlined above; and,

NOW, THEREFORE, in consideration of the mutual promises, obligations and covenants herein contained, the City and the Developer agree as follows:

AGREEMENT

- 1. <u>Interest of Developer</u>; Authority to Enter into Agreement. The Developer, and each person signing on behalf of Developer, represents that the Developer or its principals holds all legal or equitable interests in the Property, and that no other entities or individuals hold a legal or equitable interests in this Property; or Developer is authorized to enter into this Agreement on behalf of those entities or individuals and bind them under this Agreement. Each of the City, and those persons signing on its behalf, below, represent that the City is authorized to enter into this Agreement and bind the City under this Agreement.
- 2. <u>Term.</u> The term of this Agreement shall commence on the Effective Date and extend until the twentieth (20th) anniversary of the Effective Date. This Agreement is subject to termination as otherwise set forth in this Agreement.
- 3. <u>Development of Project</u>. The Developer will develop the Project to completion, and commence business transactions, including the sale and servicing of motor vehicles (new and used), from the Property, within eighteen (18) months from the Effective Date, subject to extension in the event of litigation which is a direct causation of delay in the development of the Property or the commencement of sales and which is not attributable to the Developer.
- <u>Further Review/Exercise of Discretion</u>. Developer acknowledges that the existing land use regulations contemplate further review of elements or portions of the Project by the City, including but not limited to design review and potential CEQA analysis not caused by the City's actions. This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit discretion of the City or any of its officers, officials or employees exercising their discretion with regard to rules, regulations, ordinances or laws, including the mitigation measures identified in the adopted negative declaration for the Project; provided, however, that in no event shall Developer's vested right to develop and construct the Project in accordance with this Agreement and the Development Plan be limited or abridged, nor shall the provisions of this Agreement be limited or adversely affected. In addition, changes in rules, regulations or policies of the City which occur after the Effective Date, including but not limited to those which govern architectural design, landscaping, public improvements, or construction standards, shall apply as though they were in effect as of the Enactment Date. The City also retains the authority to take the following actions: adopt and apply property transfer taxes, excise taxes, and/or utility taxes; uphold the right of the voters to act by initiative or referendum, but only to the extent that the initiative or referendum does not affect or interfere with the vested rights acquired by Developer as stated pursuant to Section 3 of this Agreement, except that this Agreement itself is subject to referendum; impose traffic mitigation fees adopted by the regional transportation agency; and/or take other action not expressly prohibited by the terms or provisions of this Agreement. This Agreement shall not prevent the City from applying its rules, regulations and policies, or from conditioning future Project development approval on rules, regulations and policies which do not conflict with the terms of the Development Plan or this Agreement.
- 5. Development Fees, Exactions and Dedications.

- 5.1. <u>Development Processing Fees, Exactions.</u> The City shall be entitled to impose on a City-wide basis development fees, special assessments, special taxes, exactions and dedications, which are payable due to the development, build-out, occupancy and use of the Property which are in effect at the time the building permits are actually issued rather than those effective as of the Effective Date. Developer shall be subject to the normal and customary fees then in effect in City at the time such fees are assessed or are to be paid, provided that such fees have general applicability on a City-wide basis and are prospective only.
- 5.2. <u>Dedications</u>. Developer shall irrevocably offer to dedicate to City, upon request by the City, all portions of the Property designated in the conditions of approval for the Project (as counter-signed by the Developer; the "Conditions of Approval") for public easements, streets or public areas.
- 5.3. Contribution to Costs of Facilities and Services. Developer agrees to contribute to the costs of public facilities and services as required to mitigate the impacts of the development of the Property as provided in the Conditions of Approval. Developer recognizes and agrees that, but for Developer's contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Agreement, the City would not and could not approve the development of the Property as provided by this Agreement. City's approval of development of the Property is in reliance upon and in consideration of Developer's agreement to make such contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Property all as provided under the Conditions of Approval.
- 5.4. Reimbursement for Agreement Expenses of City. Developer agrees to reimburse City for reasonable and actual expenses, including but not limited to staff overtime expenses incurred in processing, review, approval, inspection and completion of the Project, which are over and above fees paid by Developer as an applicant, for costs incurred by City relating to this Agreement, including recording fees and publishing fees an allowance of \$5,000.00 in lieu of payment for staff services, consultant costs or attorneys' fees. The reimbursement shall be paid to City within thirty (30) days of submission of an itemized bill to Developer for such expenses.
- 6. <u>Use of Property</u>. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Property or any part thereof, that during construction and thereafter for a period of twenty (20) years from the recording of the Certificate of Completion, Developer, its successors and assigns, shall devote the Property to use as a retail automobile dealership use under franchise of Ford Motor Company, or another manufacturer mutually acceptable to the City and the Developer; provided that this Agreement shall not be construed to limit introduction of additional product lines on the Property by Developer or its successors. If Developer materially breaches the requirements of this section, and, as a result thereof, is in default under this Agreement, Developer shall be required to reimburse the City for any and all expenses and financial assistance, with interest calculated from the date of payment by the City to developer, and City may, in its discretion, terminate this Agreement

7. Economic Assistance to Developer.

- 7.1. Findings of Need. The City has found and determined there is a need for certain financial assistance to assist Developer in order to render the Project economically feasible. Extensive improvements to the Property will be required in order to render development of the Property possible. As a result of these economic and financial burdens, development of the Property is not economically feasible unless financial assistance is provided. Developer has stated that it is unwilling to develop the Property unless financial assistance is provided. The City has further determined, based upon its review of the projected economics of the Project for the Developer, that the Project would more than likely not be feasible and would more than likely not be accomplished without the financial participation of the City under this Agreement.
- 7.2. Benefits of Development to the Community. The City has determined that the development of the Property will provide social and economic benefits to the community. Specifically, the proposed development of the Property will provide a source of employment and creation of jobs within the community. In addition, the proposed development of the Property will generate needed additional sales and property tax revenues to the City and other public agencies. The proposed development of the Property will enable needed capital projects to be completed, and provide funds for maintenance and operations of the public facilities, including but not limited to police facilities, which will improve the health, safety and welfare of the community, improve the economic conditions of the community and provide for the public safety and convenience. The Developer will make good faith efforts to hire Morgan Hill residents and use Morgan Hill vendors and suppliers in its activities pursuant to this Agreement. The Project will further identify the Property and area within its vicinity as commercial destinations and will improve an entryway to the Project Area.
- 7.3. Economic Assistance; Joint and Several Obligation. Commencing as of the Operation Commencement Date and continuing until end of the quarter (for sales tax reporting purposes) which follows the tenth (10th) anniversary of the Operation Commencement Date (the end of which quarter shall constitute the "Final Payment Accrual Date"), the City shall make payments to the Developer in an amount determined by the taxable sales actually generated by the Property and operations thereon, up to a total of One Million Two Hundred and Twenty-Five Thousand Dollars (\$1,225,000) (the "Total Assistance Amount"). The payments shall be determined and made based on the taxable sales generated from the Property and operations thereon and the tax revenue collected by the City from the Property and operations thereon. The City shall make payment to the Developer for taxable sales over the "Baseline Amount" and in accordance with Table A- "Payment Schedule" as defined below. Within sixty days after the end of each fiscal quarter of operation, Developer shall submit to the City Manager bona fide documentation demonstrating to the City's satisfaction that the particular amount of sales taxes paid, and stating those which qualify for the rebate program. Any rebate amount shall be paid upon verification by Finance Director of receipt of the sales tax revenue.

"Baseline amount" is defined as Fifteen Million Dollars (\$15,000,000) for the first "Year of Operation" (as defined to mean the first full four-quarter period following the Operation Commencement Date for which sales taxes are reported by the Developer); Twenty Million Dollars (\$20,000,000) for the second Year of Operation; and, Twenty Five Million Dollars (\$25,000,000) for each Year of Operation thereafter. The following Table A illustrates how the payments to the Developer would be calculated:

TABLE A- Payment Schedule

| Baseline Amount in Taxable Sales | Baseline Amount in Tax Revenue Collected By the City attributed to Taxable Sales | Calculation of payment |
|---------------------------------------|--|---|
| \$15,000,000 for first year | \$150,000 | 50% times each tax revenue dollar collected above \$150,000 for the Year of Operation |
| \$20,000,000 for second year | \$200,000 | 50% times each tax revenue dollar collected above \$200,000 for the Year of Operation |
| \$25,000,000 for each year thereafter | \$250,000 | 50% times each tax revenue dollar collected above \$250,000 for the Year of Operation |

For example, if in the first Year of Operation the Developer generates Twenty Million Dollars (\$20,000,000) in taxable sales and prior to the payment date the City collects Two Hundred Thousand Dollars (\$200,000) in tax revenue attributable to the taxable sales, the City shall pay the Developer Twenty Five Thousand Dollars (\$25,000) per the calculation in the above Table A for the first Year of Operation. In the third year of operation, if the Developer generates Forty Million Dollars (\$40,000,000) in taxable sales and the City collects Four Hundred Thousand Dollars (\$400,000) in tax revenue attributed to the taxable sales, the City shall pay the Developer Seventy Five Thousand Dollars (\$75,000) per the calculation in the above Table A for that Year of Operation.

If the Total Assistance Amount has been paid to the Developer prior to the Final Payment Accrual Date, no further sums shall be due and owing from the City, and the rebate agreement shall cease. Payments shall be made by the City within one hundred fifty (150) calendar days following the end of the second and fourth quarters for which sale taxes are reported; provided that unless and until the Baseline Amount has been reached, no payments shall be required to be made in respect to the current Year of Operation.

- 7.4 <u>Reporting Obligations</u>. Within thirty (30) days after the end of each quarter of operation of the Project, Developer shall submit to the City Manager bona fide documentation demonstrating to the City's satisfaction the particular amount of sales taxes were in fact paid and which qualify for the rebate program.
- 8. <u>Cooperation in Implementation</u>. Upon satisfactory completion by Developer of all required preliminary actions provided in the Development Plan, and payment of required processing fees, if any, City shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the Development Plan, including the following actions: processing and checking all maps, plans, land use and architectural review permits, building plans and specifications, and other plans relating to

development of the Property. The City shall also reasonably cooperate with Developer in Developer's efforts to obtain such permits and approvals as may be required from other agencies with jurisdiction over the Project.

- 9. <u>Drainage, Water System, Sewer, Road, Traffic and Other Public Improvements</u>. Developer agrees to construct the public improvements as required under the Conditions of Approval, including but not limited to full frontage improvements along Condit. Such public improvements shall be submitted for approval and constructed in accordance with the City's standard improvement agreement requirements, including but not limited to insurance, bond and indemnification requirements. Developer agrees that it is not entitled to any reimbursement by the City for such improvements unless otherwise stated in the City's improvement agreement with the Developer.
- 10. <u>Landscape and Maintenance</u>. Developer shall landscape and maintain the Property as provided under the Landscape and Maintenance Agreement between the City and the Developer.

11. Default; Effect Thereof; Waiver.

- 11.1. <u>Default</u>. Failure by either party to perform any material term or provision of this Agreement shall constitute a default, provided that the Party alleging the default shall have given the other Party advance written notice and thirty (30) days within which to cure the condition, or, if the nature is such that it cannot be cured within that time, the party receiving notice shall not be in default if the allegedly defaulting Party commences to perform its obligations within the thirty (30) days period and diligently prosecutes the cure toward completion. Written notice shall specify in detail the nature of the obligation to be performed by the Party receiving notice.
- 11.2. Remedies. It is acknowledged by the Parties that the financial obligations of the City under this Agreement are limited to those amounts provided in Section 7.3 of this Agreement and the City would not have entered into this Agreement if it were liable for damages under or with respect to this Agreement in excess of that portion of the Total Assistance Amount not yet required to be paid to the Developer. City shall not be liable in damages to Developer in excess of such remaining portion of the Total Assistance Amount not yet required to be paid, or to any assignee, transferee, or any other person, and Developer covenants not to sue for or claim damages in excess of such remaining portion of the Total Assistance Amount not yet required to be paid. Upon Developer's material default, City shall be entitled to initiate legal proceedings to specifically enforce this Agreement or terminate it. City may terminate this Agreement, upon notice and an opportunity to cure as provided in Section 11.1, due to uncured default without legal action.
- 11.3. <u>Default by Developer.</u> City, may, in its discretion, refuse to issue a building permit for any structure within the Property, if Developer has materially failed or refused to complete any requirement applicable to the building permit as provided under the Conditions of Approval. This remedy shall be in addition to any other remedies provided for by this Agreement.
- 11.4. Effect of Default. In the event of Default by Developer pursuant to this provision, all obligations of the Parties shall terminate with the exception of Developer's obligation to defend, indemnify and hold harmless the City, its officers, agents and employees, and Developer's obligations under any Improvement Agreements executed with the City for the Project shall be governed by such Improvement Agreements, if any. No termination shall prevent Developer from completing those portions of the Project in which it has a vested right to do so as defined by law

independent of this Agreement, but the City may take any action permitted by law to prevent, stop or correct any violation of law occurring during and after construction, and neither Developer or any tenant thereof shall occupy any portion of the Project, or any building not authorized by a certificate of occupancy.

- 11.5. <u>Waiver</u>. Failure by either Party to invoke the default or termination provisions in this Agreement shall not waive that Party's right to insist upon performance of any obligation by the other Party in the future.
- 12. <u>Estoppel Certificate</u>. Either Party may, at any time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and constitutes a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments or modifications, and (c) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a written request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the Parties. The City Manager of the City shall be authorized to execute any certificate requested by Developer.

13. <u>Mortgagee Protection.</u>

- 13.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement or a Memorandum thereof, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.
- 13.2. <u>Mortgagee Not Obligated.</u> City, upon receipt by City of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that the failure of Developer to pay any taxes or assessments is cured by the Mortgagee prior to such succession.
- 13.3. <u>Notice of Default to Mortgagee</u>. If City receives notice from a Mortgagee requesting a copy of any notice of default given Developer and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of default. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the City's notice.
- 13.4. <u>Certification Requested by Mortgagee(s)</u>. The City shall not unreasonably refuse to provide certifications if requested to do so by one or more Mortgagees so long as the terms of this Agreement are not materially altered thereby, and Developer is not in default under any term of this Agreement.

- 14. <u>Severability</u>. The unenforceability, invalidity or illegality of any provision, covenant, condition or term of this Agreement which is not material shall not render the material provisions unenforceable, invalid or illegal.
- 15. Relationship of City and Developer. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Developer and that Developer is an independent contractor and not an agent or employee of City. All persons employed or utilized by Developer in connection with this Agreement are employees of Developer and shall not be considered employees or agents of City in any respect. The Parties declare that the Project is a private development, and hereby renounce the existence of any form of joint venture, association or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers, agents, associates, or partners.
- 16. <u>Amendment or Termination</u>. City and Developer, by mutual agreement may terminate or amend the terms of this Agreement, and the amendment or termination shall be accomplished in the manner provided under California law for the enactment of Development Agreement Amendments.
- Transfers and Assignments. Excepting for Developer's rights to receive payments under 17. Section 7.3 hereof ("Payment Rights") and the assignment, pledge or hypothecation thereof by Developer from time to time at Developer's election ("Assignment of Payment Rights"), neither party hereto shall assign or transfer any of its interests, rights, or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Should Developer assign any of its interest, rights or obligations under this Agreement, it shall nonetheless remain liable for performance of the obligations for installation of public improvements and payment of fees. During the Term of the Agreement, Developer shall provide City with written notice of transfer of fee title (not including leases or ground leases) to the Property within sixty (60) days following each transfer. Each successor in interest to Developer shall be bound by all of the terms and provisions applicable to the portion of the Property acquired by it. This Agreement shall be binding upon and inure to the benefit of the Parties' successors, assigns and legal representatives. The only exceptions to these requirements for obtaining the City's consent are: (a) the Assignment of Payment Rights, and (b) the sale or lease of a subdivided parcel of the Property (i) upon which all public improvements are completed, all applicable fees paid, and all landscaping as required by the Conditions of Approval have been installed; or (ii) which is being sold or transferred to an affiliated or related company or entity of Developer, which is defined as a legal entity which is owned at least fifty percent (50%) by Developer, or which has as a majority of its general partners a majority of the general partners of Developer.
- 18. <u>Agreement Runs with the Land.</u> The terms of this Agreement and the Development Plan are legislative in nature, and apply to the Property as regulatory ordinances. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall run with the land, be binding upon, and inure to the benefit of, the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever.
- 19. <u>Indemnification.</u> Developer agrees to indemnify and hold harmless City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs and liability for any injury or property damage resulting from the performance

under this Agreement by the Developer, its contractors, subcontractors, agents, or employees, including but not limited to liabilities for failure to comply with applicable laws. This provision is intended to be broadly construed and extends to, but is not limited to, any challenge to the validity of this Agreement or its passage, or approval by the City, City Council, Planning Commission or other advisory body.

- 20. <u>Construction</u>. This Agreement is prepared and reviewed by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.
- 21. <u>Insurance</u>. During the term of this Agreement, Developer shall purchase and maintain in full force and effect the following insurance policies: (1) commercial general liability insurance; (2) comprehensive automobile insurance (bodily injury and property damage) with respect to employees and vehicles assigned to performance of work under this Agreement; (3) workers' compensation, employer's liability if required by law. Such policies shall be in with the limits of coverage and endorsements as set forth in <u>Exhibit B</u> attached to this Agreement. The scope and form of each respective insurance coverage shall be subject to approval of the City Attorney. The City must approve all insurance coverages and carriers prior to Developer's commencement of construction activities on the Project. The City will promptly review coverages as submitted by or on behalf of the Developer.
- 22. <u>Force Majeure.</u> Performance by either party shall not be deemed to be in default where delays or defaults are directly due to war, insurrection, strikes, lockouts, walkouts, riots, heavy floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, or enactment of superseding state or federal laws or regulations. City and Developer shall promptly notify the other Party of any delay hereunder.
- 23. <u>Nondiscrimination</u>. Developer shall not discriminate, in any way, against any person on the basis of race, color, national origin, gender, sexual orientation, age, creed, religion or disability in connection with or related to the performance of this Agreement.
- 24. <u>Notices.</u> All notices required or provided for under this Agreement shall be in writing and delivered (a) in person, (b) sent by certified mail, postage prepaid, (c) sent by overnight delivery, or (d) sent via facsimile.

Notices required to be given to the City shall be given to:

City Manager City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037

With a copy to:

City Clerk City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037-4128 Notices required to be given to Developer shall be addressed as follows:

[fill in name/contact person for Developer]

Party may change its address by giving notice in writing to the other Party as specified in this provision. Notices shall be deemed given and received upon the earlier of personal delivery, or if mailed, upon the expiration of forty-eight (48) hours after being deposited in the United States Mail or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

- 25. <u>Duplicate Originals</u>; Entire Understanding; Headings; Further Documents. This Agreement may executed in duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all prior negotiations and agreements between the Parties. The headings in this Agreement are for convenience only, and shall not be used as an aid in interpreting the terms hereof. The Parties shall take all other actions and execute and deliver all other documents necessary or convenient to carry out the terms hereof and to fulfill the purposes and intent of this Agreement.
- 26. <u>Exhibits.</u> The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A- Map and Legal Description

Exhibit B- Insurance Requirements

- 27. Recording of Development Agreement, Amendment or Cancellation. Within ten (10) days after all Parties have executed this Agreement, or within thirty (30) days after the Ordinance executing this Agreement is enacted by the City, whichever is later, the City Clerk shall submit this Agreement for recording with the County Recorder assuming the Developer has acquired fee ownership of the Property. If the Parties or their successors-in-interest amend or cancel the Agreement, or if the City terminates or modifies the Agreement for failure of the Developer to comply in good faith with the terms or conditions of the Agreement, the City Clerk shall timely submit the notice of such action for recording action with the County Recorder.
- 28. <u>No Third Party Beneficiary</u>. This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party, and no third party shall have any claim or right of action hereunder for any cause whatsoever.
- 29. <u>Governing Law; Legal Action</u>. This Agreement shall be governed by the law of the State of California. All Legal Action regarding this Development Agreement shall be filed in the Superior Court of the County of Santa Clara, State of California.
- 30. <u>Dispute Resolution</u>. Any controversies between Developer and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days after a written request of one party invoking mediation is served on the other party. The parties may agree on one mediator. If they cannot, the party demanding mediation shall request the Superior Court of the County of Santa Clara to appoint a mediator. The mediation shall not exceed eight (8) hours, unless an extension of time is mutually agreed to by both parties. The costs of mediation shall be borne equally by both parties. Mediation

under this section is a condition precedent to filing an action in any court.

| IN WITNESS WHEREOF, the parties hereto | o have caused this Agreement to be executed as follows | | |
|---|--|--|--|
| CITY OF MORGAN HILL: MORGAN HILL LAND, LLC, limited liability company | | | |
| By:City Manager | By: | | |
| APPROVED AS TO FORM: | ATTEST: | | |
| By: City Attorney | By: City Clerk | | |
| T:\Agreements-Contracts-Deeds\Ford Store | - City 10-10. | | |



| CONSIDER | R REQ | UEST | FRO | M THE | MORGA | N HILL |
|----------|-------------|------|-------|----------------|--------------|---------------|
| KIWANIS | CLUB | TO Y | WAIVE | SPECIAL | EVENT | PERMIT |
| FEES | | | | | | |

| 1 | Agenda Item # 27 |
|---|--------------------|
|] | Prepared By: |
| - | Council Services & |
| | Records Manager/ |
| | City Clerk |
| | Submitted By: |
| | |
| | |

City Manager

RECOMMENDED ACTION(S):

- 1. Consider requests to waive fees; and
- 2. Provide Direction to staff

EXECUTIVE SUMMARY:

The City Council has received a request from Barbara Kimmich, on behalf of the Morgan Hill Kiwanis Club, to waive the \$125 Special Events Permit for the Holiday Parade scheduled for December 6, 2003.

As the Council knows, the Community Promotion budget was reduced this fiscal year to address the City's fiscal constraints. Staff allocated \$17,400 under the Community Promotions budget. The \$17,400 has been earmarked for Fiscal Year 2003-04 as follows: 1) \$2,000 - Taste of Morgan Hill (showcase City of Morgan Hill projects/activities); 2) \$2,900 - Youth Empowered for Success activities; and 3) \$12,500 for Independence Day Inc. (IDI) Fourth of July activities. Staff did not fund for other non-profit requests.

Staff is not recommending that the Council waive the Special Events Permit fee as it would set a precedent for future requests by non profits and would be contrary to the Council's cost recovery policy. Should the Council wish to assist this non profit organization, the Council can: 1) reduce funding from YES or IDI, Inc. to pay for the Special Event Permit (Taste of Morgan Hill utilized the limited funding earmarked for that event); or 2) allocate General Fund reserves to pay for the Special Events Permit.

FISCAL IMPACT: No fiscal impact should the Council deny the request or fund from the current allocated Community Promotion funding. General Fund reserves would be impacted to the degree the Council wishes to support/fund City fees for non-profit organizations. Should the Council choose this course of action, funding from the General Fund reserves would need to be transferred to account 010-42248-1220.



| Agenda | Item | # | 28 |
|--------|------|---|----|
| | | | |

Prepared By:

Council Services & Records Manager/ City Clerk

Submitted By:

City Manager

RESIGNATION OF A LIBRARY COMMISSIONER

RECOMMENDED ACTIONS:

- 1. Accept John Boyne's Notice of Resignation from the Library Commission
- 2. Direct Staff with Regards to Filling Vacancy on the Library Commission

EXECUTIVE SUMMARY:

Attached, please find a copy of a letter submitted by John Boyne dated September 26, 2003, tendering his resignation from the Library Commission. Council Member Tate has spoken to the applicant who was not appointed to the Library Commission in spring 2003 to inquire whether they would be interested in being appointed to fill the unexpired term of Mr. Boyne through April 1, 2004. The applicant was not interested in the appointment.

The Council amended Section 2.68.020 of the Municipal Code in May 2002 to allow the membership on the Library Commission to consist of up to nine members, at least four of whom shall be residents and registered voters of the City of Morgan Hill. The City Council can appoint up to three members who reside in the unincorporated area of Santa Clara County and/or otherwise within Morgan Hill's sphere of influence. Staff will note that prior to the May 2002 ordinance amendment, the membership for the Library Commission was at seven.

Staff is requesting Council direction regarding the vacancy created by Mr. Boyne. The Council can: 1) Direct staff to recruit to fill vacancy; or 2) defer filling vacancy until the spring 2004 recruitment, allowing the Library Commission membership to remain at eight.

FISCAL IMPACT: The time necessary to prepare this report is accommodated in the Council Services and Records Manager's operating budget.



REQUEST TO SEND LETTER TO THE SANTA CLARA COUNTY CITIES ASSOCATION, RECOMMENDING CHANGES TO BYLAWS

| Agenda | Item # 29 |
|---|-------------------|
| Prepare | ed By: |
| 0 | Services & |
| City Cle | s Manager/ erk |
| Submitt | ted By: |
| | |

City Manager

RECOMMENDED ACTION(S): Authorize Mayor to send letter to the Santa Clara County Cities Association, recommending that the Bylaws be amended.

EXECUTIVE SUMMARY:

Mayor Kennedy is requesting that the Council authorize him to send a letter to the Santa Clara County Cities Association requesting that their Bylaws be amended. Mayor Kennedy is in the process of drafting the letter and the recommended amendments to the Bylaws for Council consideration and will have them available for Council consideration at the October 15 meeting. Staff has attached the current Bylaws, as they exist today, for Council reference.

FISCAL IMPACT: No fiscal impact.



REDEVELOPMENT AGENCY/CITY COUNCIL STAFF REPORT

MEETING DATE: October 15, 2003

DOWNTOWN REQUEST FOR CONCEPTS PROCESS

RECOMMENDED ACTION(S): Approve the categorization of proposals and direct staff to continue with the process.

| Agenda Item # 30 |
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| Approved By: |
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| DAHG DI |
| BAHS Director |
| Submitted By: |
| |
| Executive Director |
| |

EXECUTIVE SUMMARY: In September 2003, the City Council adopted the selection criteria and process for the downtown Request For Concepts (RFC) as recommended by the Economic Development (ED) Subcommittee. Proposals would be divided into two categories:

• Category One- "Quick Hitters"

This category includes those proposals that conform to the downtown plan, can be implemented with minimal costs, can be implemented quickly to show results, and require a minimal amount of funds or can be funded with existing Agency programs. The rationale behind moving forward with some of these proposals is that they can be quickly evaluated and action can be taken to implement these proposals in a timely manner. As appropriate, we would also refer some proposers to others to determine if they can merge their proposals to create a more viable project.

• Category Two-Information Gathering

This category includes those proposals that we need more information from in order to begin evaluating the proposals. Staff would meet with the proposers to collect this information. Overall, the objective is to rank the proposals and determine how they should proceed in the process.

The attached tables list the "Quick Hitters" proposals as recommended by the ED Subcommittee. The proposals in this category are grouped by: 1) those that would drop out of the process if they could not be addressed by an existing program or nominal assistance by the Agency, 2) those that would be placed back into category two if a project could not be developed with existing programs or minimal Agency assistance, and 3) those that require more City research and may evolve into a City financed infrastructure project. The tables also briefly summarize the status of or the recommended actions that staff will pursue regarding the proposal. We also included a list of the proposals that fall into Category Two.

For those "quick hitter" proposals that require financial assistance beyond standard programs, any financial assistance packages will be brought to the Agency for consideration. We anticipate providing the Agency regular updates on the status of the quick hitters and our progress in implementing proposals. The ED Subcommittee will also be recommending to the Agency those proposals that should be invited to continue in the specific RFP process. This should occur prior to the end of the year.

FISCAL IMPACT: None at this time